S. Hrg. 99-207

GAMBLING ON INDIAN RESERVATIONS AND LANDS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 902

TO ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ACTIVITIES WITHIN INDIAN COUNTRY, AND FOR OTHER PURPOSES

JUNE 26, 1985
WASHINGTON, DC

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GAMBLING ON INDIAN RESERVATIONS AND LANDS

WEDNESDAY, JUNE 26, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room SD-628, Dirksen Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews, Gorton, Murkowski, Abdnor, and DeConcini.

Staff present: Peter S. Taylor, staff director; Michael Mahsetky, staff attorney; and June Tracy, professional staff member.

Senator ANDREWS. The committee will come to order.

We realize it is uncomfortable for those of you standing, but we wanted to accommodate as many as we could.

As you know, this is a hearing on S. 902, to regulate gambling on Indian reservations. On April 4, 1985, Senator DeConcini introduced Senate bill 902, to establish Federal standards and regulations for the conduct of gaming activities within Indian country. The purpose of the legislation is to provide a Federal regulatory program to guard against the intrusion of organized crime into tribal gaming operations in Indian country while at the same time protecting the rights of tribes to conduct gaming operations as a means of generating needed tribal revenues.

The States and the U.S. Government have expressed concern about the possible intrusion of organized crime into tribal gaming operations. Tribes also have expressed concern over this possibility Some States have called for making tribal gaming operations subject to State law.

Aside from concern about organized crime, other concerns that have been raised by States with regard to tribal gaming operations are: First, the loss of revenues by the State because of tribal competition; second, the loss of revenues to local charitable organizations licensed by the State; and, third, loss of control of gaming operations to assure fairness and honesty of games to protect the betting public.

The tribes have objected to having their gaming activities made subject to State regulation on the grounds that: First, this would constitute an invasion of their sovereign right to be self-governing; second, this would constitute an abdication to the Federal responsibility to protect the tribes and their governments; and, third, if the tribal gaming operations were placed under State regulation, the tribal gaming operations would simply cease to function since the primary reason for their draw of crowds is the higher pot limits offered by the tribes than is often offered by those gaming operations off reservations.

At this point in the hearing record I would like to have inserted the text of S. 902, as introduced.

[The text of S. 902 follows:]

II

99TH CONGRESS
1ST SESSION

S. 902

To establish Federal standards and regulations for the conduct of gaming activities within Indian country, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 4 (legislative day, FEBRUARY 18), 1985

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To establish Federal standards and regulations for the conduct of gaming activities within Indian country, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gaming Control Act".

SEC. 2. The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities in Indian country as a means of generating tribal governmental revenues;

(2) Federal courts have held that Indian tribes have the exclusive right to regulate gaming activity

which is not prohibited by Federal law and which is conducted within a State which does not, as a matter of public policy, prohibit such gaming activity;

(3) some Indian tribes have expressed concern about their ability to continue to regulate or operate gaming activities free from the influence of organized crime, racketeers, professional gamblers, and those who would defraud or otherwise attempt to exert corrupt influence upon them;

(4) existing Federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming activities within Indian country;

(5) a principal goal of Federal Indian policy is to promote strong tribal governments, tribal self-sufficiency, and tribal economic development; and

(6) tribal operation and licensing of gaming activities is a legitimate means of generating revenues for governmental operations and programs.

SEC. 3. Congress hereby declares that the establishment of Federal standards for gaming activities in Indian country is necessary to meet the concerns which have been raised about such activities and to protect such activities as a means of genrating needed tribal revenues.

SEC. 4. For the purpose of this Act—

(1) "Secretary" means the Secretary of the Interior;

(2) "Indian tribe" means any Indian tribe, band nation, or other organized group or community which is recognized as eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian country" means (a) all lands within the limits of any Indian reservation and, (b) any lands title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(4) "gaming" means to deal, operate, carry on, conduct, or maintain for play any banking or percentage game or other game of chance played for money, property, credit, or any representative value, but does not include social games played solely for prizes of minimal value or games played in private homes or residences of prizes of mininal value, or traditional forms of Indian gambling engaged in by individuals as part of or in connection with tribal ceremonies or celebrations; and

(5) "Commission" means the Regional Indian Gaming Commissions which may be established pursuant to section 11 of this Act.

SEC. 5. Unless conducted pursuant to a tribal ordinance or resolution adopted by an Indian tribal government and approved by the Secretary of the Interior or Commission as provided in this Act, gaming within Indian country shall not be legal. Any violation of gaming laws or regulations shall be subject to tribal prosecution under any applicable provisions of the tribal criminal code or to Federal prosecution pursuant to the provisions of any specific Federal law prohibiting gaming activity or the provisions of section 1152 of title 18, United States Code.

SEC. 6. (a) Except where a gaming activity is specifically prohibited within Indian country by Federal law or within a State by State public policy as a matter of criminal law, an Indian tribe may engage in or license and regulate such gaming activity within its jurisdiction if the governing body of the tribe adopts an ordinance or resolution which is approved by the Secretary or Commission pursuant to subsection (b).

(b) The Secretary or Commission shall approve any tribal ordinance or resolution concerning the conduct, licensing, or regulation of gaming activity within the tribe's jurisdiction if it provides, at a minimum that—

(1) the tribe itself will have the sole proprietory interest and will conduct any proposed gaming activity, except as provided in subsection (c);

(2) except as provided in sections 7 and 11(e) of this Act, the net revenues from tribal gaming operations will be used solely to fund tribal government operations, programs, economic development and to provide for the general welfare of the tribe and its members and may also be donated to charity organizations and to help fund operations of local governmental agencies;

(3) annual independent audits will be performed by the tribe; and

(4) no individual tribal member or nontribal individual or entity will have any proprietary interest in any tribal gaming operation.

(c) A tribal ordinance or resolution may provide for the licensing and regulation of gaming conducted or operated by individual tribal members or nontribal individuals or entities: *Provided*, That licensing requirements and regulations governing such games shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State. No individual tribal member or nontribal individual or entity shall be eligible to receive a tribal license to conduct gaming activity within a tribe's jurisdiction if such individual or entity is not otherwise eligible to receive a State license to conduct the same activities within the jurisdiction of the State.

(d) Any duly submitted tribal gaming ordinance or resolution shall be approved or disapproved by the Secretary or Commission within ninety days of its submission. Any ordinance or resolution which has not been acted upon within ninety days after it is submitted shall be deemed to have been approved by the Secretary or Commission.

SEC. 7. (a) Subject to the approval of the Secretary or Commission, a tribe may enter into a management contract for the operation and management of a tribal gaming enterprise for a reasonable fee which shall not exceed 49 per centum of the net revenues of such operation: *Provided*, That, before approving such contract, the Secretary or Commission shall require and obtain the following information:

(i) the name, address, and other additional pertinent background information of every individual having a financial interest in or management responsibility for such contract or in the case of a publicly held company, of those individuals who serve on the Board of Directors and as officers of such company;

(ii) a description of any previous experience which the contractor or the persons listed pursuant to subparagraph (i) has had with other gaming contracts with

Indian tribes or gaming licenses issued by an Indian tribe or State, including the name and address of the licensing agency or other parties to any other gaming contract; and

(iii) a complete financial statement of the contractor and those persons listed pursuant to subparagraph (i).

(b) The Secretary or Commission shall further require that all management contracts entered into pursuant to this section shall specifically provide that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provided to the tribal governing body on at least a monthly basis.

(c) Each properly submitted contract shall be considered and notification of approval or disapproval shall be provided to the parties within ninety days of receipt of the proposed contract. The decision of the Secretary or Commission shall be final. Any contract not acted upon within ninety days shall be considered as having been approved.

(d) The Secretary or Commission shall not approve and may void any contract where he or the Commission has knowledge that any person listed pursuant to subparagraph (i) of this section is an elected member of the governing body of the Indian tribe which is a party to the management contract, has been or subsequently is convicted of any felony or gambling offense, has provided false or misleading statements or information to the Secretary or Commission pursuant to this section or the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act.

SEC. 8. In fulfilling his responsibilities under this Act, the Secretary or the Commission shall have the power to (1) inspect and examine all premises wherein gaming is conducted pursuant to the provisions of this Act, and (2) demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting the gross income produced by a gaming business and require verification of income and all other matters respecting the enforcement of this Act and regulations, ordinances, and resolutions enacted pursuant to this Act.

SEC. 9. The Secretary or Commission shall have the duty to preserve any and all information received pursuant to section 6(b)(3) and section 8 as private and confidential; and such information shall not be subject to disclosure to the public.

SEC. 10. Any existing gaming operation in Indian country shall have one year from the date of enactment of this Act to comply with this Act.

SEC. 11. (a) The Indian tribes respectively located within the administrative jurisdiction of the existing area offices of the Bureau of Indian Affairs shall have the right respectively to organize and establish a Regional Indian Gaming Commission and adopt an appropriate governing document which shall become effective when ratified within any twelve-month period by a majority vote of the governing bodies of no less than two-thirds of the Indian tribes respectively in each area. Such governing document, when ratified as aforesaid and approved by the Secretary, shall become effective within ninety days of approval by the Secretary. Any duly ratified governing document shall be deemed to be approved if not acted upon by the Secretary within ninety days of its being duly ratified by the Indian tribes in the respective area and shall become effective ninety days following such period. Amendments to the governing document may be ratified by the Indian tribes and approved by the Secretary in the same manner as the governing document. The governing document shall be revocable upon a majority vote, within any twelve-month period, of the governing bodies of no less than a majority of the Indian tribes respectively in each area.

(b)(1) Each Commission shall consist of seven voting representatives and two nonvoting representatives. The voting representatives shall be selected in accordance with the governing document of the respective Commissions. One nonvoting representative, respectively, shall be selected by the Secretary of the Interior and the Attorney General of the United States.

(2) No representative may serve on the Commission who has been convicted of any felony or gaming offenses, or who has a financial interest in or management responsibility for any management contract authorized pursuant to section 7 of this Act.

(c) Each Commission, upon the effective date of its governing document pursuant to subsection (a) of this section, shall assume and have all the same authority and responsibility that the Secretary has in the respective area to approve or disapprove all tribal gaming ordinances, resolutions, and management contracts, and otherwise regulate all Indian gaming activities in such area pursuant to the authorities contained in this Act. All of the Secretary's authority and responsibilities pursuant to this Act shall be subsumed by the respective Commissions in such area upon the effective date of their governing documents except as provided in subsections (a) and (b) of this section and section 12 of this Act.

(d) Each Commission shall meet at least quarterly each year and shall maintain permanent offices and establish such procedures and maintain such records as are necessary to carry out their duties and responsibilities under this Act.

(e) The expenses of each Commission shall be paid for by assessments made by the respective Commissions of each Indian tribe maintaining gaming activities as defined in section 3 of this Act and located within the regional jurisdiction of the respective Commission. The method of assessing such fees shall be set forth in the governing document of each Commission. The Commission may revoke or suspend any tribal gaming ordinance or resolution of any Indian tribe which fails to pay their assessment to the Commission within ninety days after such tribe receives notice that such assessments are due. The Commission shall further impose a penalty of 5 per centum on any assessment or portion of such assessment which is ten to thirty days past due and 3 per centum each month or portion thereof that such assessment remains unpaid. The Commission may grant a waiver of any portion or all of the assessment or penalty of any Indian tribe for good cause shown.

SEC. 12. After notice and hearing, the Secretary may suspend the operation of any Comnmission and reassume the authority and responsibilities subsumed by any Commission if he finds that such Commission has failed or is incapable of effectively carrying out its responsibilities under this Act. The Secretary shall provide whatever assistance is necessary to a Commission to attempt to correct any deficiences in the operation of a Commission prior to any proposed Secretarial suspension of Commission operations and following any such suspension, if necessary.

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Senator **Andrews**. The size of the crowd here I think indicates the intensity of interest in this program, and of course the reason for the hearings is to hear both sides; what the specifics might be on the pros and cons of this issue.

Senator DeConcini has been temporarily detained. I have his opening statement which I will place in the record at this point.

[The opening statement follows:]

OPENING STATEMENT OF SENATOR DECONCINI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Thank you, Mr. Chairman, for allowing the Select Committee on Indian Affairs to take this time to receive tribal and other comments on S. 902. I introduced S. 902, the Indian Gaming Control Act, to facilitate the public considerations which need to be made on the development of gaming activities in Indian country.

Today many tribes are looking at the use of legalized and commercial gambling for the purposes of raising governmental revenues. Some tribes have begun to enjoy the benefits of the revenues generated by their successful bingo operations. Others unfortunately have suffered serious problems associated with poorly-negotiated management contracts. Tribal experience with gambling on the whole is varied.

But this experience indicates the need for the establishment of uniform regulatory framework within which Indian gaming can conducted in an orderly and legal fashion. S. 902 proposes the expansion of current Federal law in a manner which is consistent with the Federal court rulings in this area by setting some minimum requirements on Indian gambling. I hope that my draft bill will enable us to develop the best way to accomplish the necessary regulatory activities required so that tribes and their members and the general public can be protected.

I welcome all comments on S. 902 and any recommendations on ways in which it could be improved. This hearing represents only the beginning of our work on this issue.

Senator **Andrews**. Before proceeding to our first witness, I would like to ask Senator Gorton if he has any introductory remarks.

Senator **Gorton**. I think you summarized the issues very well, Mr. Chairman, and I look forward to hearing from our distinguished witnesses.

Senator **Andrews**. In that case, our first witness is our distinguished colleague, Hon. Pete Domenici, the senior Senator from New Mexico.

Senator Domenici, welcome to this hearing. We are glad to have you here to share your insight into this very important legislation.

STATEMENT OF HON. PETE DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator **Domenici**. Thank you very much, Mr. Chairman and members of the committee.

I will try not to take a lot of your time because obviously you have a number of witnesses. I will submit a couple of documents that I think are very important for the record in due course.

Let me start, Mr. Chairman, by telling you and the committee publicly what I have told the leadership of the Santa Ana Pueblo and Santa Ana Indians in my State. I have told them unequivocally in private conversations that under the present state of law I oppose dog racing on their reservation lands. I come today before you remaining opposed.

While I have the greatest respect for them and they are my friends, I really am concerned that we are now escalating from bingo, which has its particular nuances as to whether or not it is something we ought to encourage across this country, but, nonetheless, for the most part under existing law it is valid.

I'm very concerned that we're going to escalate in a legislative vacuum from bingo to dog racing, which is prohibited in New Mexico by State law. As a matter of fact, it is a crime by State law in my State to engage in dog racing. We will escalate from there to other forms of gambling. I would ask the question: What next? Perhaps the next step, if this will be permitted in a vacuum—and I will explain what I mean "in a vacuum"—maybe the next thing is a full-blown gambling casino. I don't see how we're going to prevent that operating out of the legislative vacuum we're operating in now, if we permit step-up from bingo to parimutuel dog racing in the State of New Mexico.

Frankly, the attorney general in the State of New Mexico has researched the issue and it is his view that dog racing in the State of New Mexico is illegal; that to participate in dog racing in the State of New Mexico is criminal. Therefore, Indians who would participate in it are subject to prosecution in a Federal court because of the Federal statutes that state, if it is a crime in a State on Indian land and if that is not made a State crime, then it is a Federal crime.

I would ask that the exhaustive research by the attorney general in the State of New Mexico on this issue be made a part of the record at this point.

Senator ANDREWS. Without objection, it will be made a part of the record immediately following your statement, Senator.

Senator DOMENICI. Then I would like to make two other points. Mr. Chairman, I understand that in the hearings that have preceded today's hearing there has been some indication that, because of the *Kerr-McGee* case and others in the Supreme Court, which have held that taxing matters are a matter of basic Indian sovereignty, there is a lack of statutory language requiring approval of tax ordinances by the Secretary. Due to the lack of any statutory requirement for Secretarial approval, the Supreme Court ruled that no approval by the Secretary is necessary. I have been told that perhaps there is some confusion, confusion on whether or not the Congress of the United States could, indeed, require approval of gaming or gambling permits by the Secretary of Interior.

Mr. Chairman, I really did not believe, in spite of the confusion, that this committee would believe that that's the case. It is not the case. If the Congress of the United States desires to explicitly require approval of the Secretary of the Interior for gaming and gambling permits, there is no question that we have such authority.

As a matter of fact, there is some indication that in this case—let us just talk about the dog racing—even without a statutory language requiring approval by the Secretary of the Interior, there is some body of law indicating that it might be a prerequisite in any event under the implied regulatory powers of the Department of the Interior that come to the President under the Constitution.

I would submit for your perusal a Congressional Research Service [CRS] study that was made at my request on evaluation of this aspect of the law. This report clarifies the *Kerr-McGee* case implications in terms of Secretarial approval and disapproval, and our inherent powers to require approval or any other regulatory scheme in this instance if we so desire. I would ask that that CRS study, which concludes that we do have such power, be made a part of the record, Mr. Chairman.

Senator ANDREWS. It will be made a part of the record, Senator, immediately following the other statement from the New Mexico attorney general and other submissions.

[See p. 64.]

Senator DOMENICI. Now, Mr. Chairman and members of the committee——

Senator ANDREWS. On that, Senator, let me ask one question: Does that study, as I gather from your brief remarks pertaining to it, indicate that any tribal constitution has to be subjected to the law of the United States? In other words, tribal constitutions can't overtake the U.S. Constitution?

Senator DOMENICI. Senator, the chairman is correct. It also refers in its rationale to the specific language in the U.S. Constitution with reference to the U.S. Congress, the executive branch, and their relationship to the Indian people.

Now, frankly, I don't want to leave the impression that I'm opposed, for I am not, to Indian economic development, to Indian sovereignty, to every effort possible. In fact, I think I've contributed somewhat to their moving in the direction of running their own affairs as much as possible.

We find ourselves, however, in an extreme dilemma when it comes to gambling in its broadest and most pervasive sense. The people of this country in the sovereign States have always exerted tremendous political power and criminal sanctions as pertains to gambling. Part of it is because they may be against gambling, and this opposition to gambling has clearly been acceptable in this country. If people want to vote in their State, through a legislature or otherwise, to have no gambling, that's been accepted. But equally as important, because it is dangerous from the standpoint of the need for supervision versus the opportunity for corruption and crime, and so it is an important issue.

Now we find ourselves with no Federal law on the subject other than the implicit criminality of a State statute and organized crime act which will make organized criminal activity in gambling subject to Federal prosecution but all of those issues are fuzzed up when it comes to the application of State law.

I have concluded that—and compliment this committee—it is absolutely imperative that Congress express itself. This door is not just opening; this door is going to swing open. We now are moved from no bingo to some 80 bingo parlors. We now have jai alai being applied for in Arizona, dog racing in New Mexico. It just seems to me that the door is going to go all the way open.

I don't believe that those of us who have genuine concern and want the Indian people to govern themselves and to progress and to promote their economic future ought to sit by and ignore the issue, ignore the issue of organized crime and gambling versus our sovereign States and who is going to enforce.

Now I don't endorse any particular approach, but I am interested in the various avenues and approaches that the U.S. Congress can take and the bills that are before you. If I understand the bills correctly—and I read them—they would basically say, for gaming and gambling, the U.S. Congress is going to require Secretarial approval and then set some conditions, conditions both as to auditing outside partners and the like. At least if you have that, you have something, not the vacuum that I started with in my opening remarks.

On the other hand, if we start down that avenue, what we will now have is the Department of the Interior under the auspices of Federal executive power, we will have the beginnings of a total regulatory scheme with all of its ramifications for gambling and gaming in all of the United States on Indian lands and reservations. I am not so sure, I say to this distinguished committee, that that is what you want to do.

Make no bones about it, unless you choose to go another way and say A, B, C are illegal, but D, E, F we'll let you do and we'll regulate them, I don't know where you're going to end up. I think it's a very, very dangerous situation for our Indian people and a very dangerous situation for the States within which they live and within which they seek to be friends, to work together, to be bound by certain basic laws that govern the compelling majority of the constituents and citizens in those sovereign States.

I have a prepared statement that goes into the two legal issues, approval or disapproval by the Secretary—is it something that we can exercise. The second issue, the issue of the jurisdiction of the States, in particular New Mexico, in an issue like dog racing where there is no permission to do it, and, as a matter of fact, it is illegal.

I thank the committee for permitting me to testify today and for their attention. I would be pleased to try to answer any questions you might have.

[Statement and information supplied by Senator Domenici follows; text resumes on p. 78.]

STATEMENT OF SENATOR PETE V. DOMENICI

OVERSIGHT HEARING
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

on

S. 902, INDIAN GAMING CONTROL ACT

Wednesday, June 26, 1985

Mr. Chairman, today's Indian Country growth industry appears to be high stakes bingo. The rapid spread of gambling to some 80 tribes nationwide is encouraging other gambling activities--Jai Alai in Arizona and greyhound dog racing in New Mexico. It is precisely this expansion of allowable gambling activities and stretching of legal interpretations to do so that has me concerned.

I congratulate you and your committee for holding this hearing at a critical time in the formation of our national policy on Indian gambling activities. It is precisely this lack of clear policy direction that is encouraging new schemes for avoiding laws that should apply to all of us. There is nothing that organized crime would like more than new havens of unregulated gambling near major metropolitan areas such as San Franciso, Los Angeles, Phoenix, Albuquerque, and Santa Fe.

We must strike the proper balance between the fair economic development needs of Indian tribes and the creation of new forms of gambling on our Indian reservations. S. 902, the "Indian Gaming Control Act," is a good starting point for consideration of this complicated moral, legal, and policy question.

I would like to focus the thrust of my remarks, Mr. Chairman, on two questions. The first deals with the matter of whether or not it is proper or legal to have the Secretary of the Interior approve tribal ordinances that establish gambling enterprises. The second question gets to the substance of the issue in a direct way by addressing the role of state law, with particular reference to the pending request in New Mexico to establish pari-mutuel dog racing.

SECRETARIAL APPROVAL

Secretary of Interior Donald P. Hodel currently has pending before him the request of Santa Ana Pueblo. Some testimony before the House yesterday left the impression that recent court decisions strengthen the right of tribes to self-determination and reduce the role of the Secretary of Interior. In matters of taxation and local policy I would agree with this interpretation. When it comes to gambling, however, I must respectfully disagree with my colleagues in the House who feel that the courts are leading the way and must continue to lead the way in determining Indian policy.

The question of Secretarial approval came up when I discussed Santa Ana's request with Governor Eliseo Raton and his attorneys. I was told that the most recent Supreme Court decision in Kerr-McGee Corp. v. Navajo Tribe of Indians, April 16, 1985, was clearly in favor of the Santa Ana Pueblo. I was told that the role of the Secretary of Interior may no longer be relevant in their pending request due to the favorable ruling in this Supreme Court tax case.

It was my feeling that the role of the Secretary could be defined by Congress as a matter of Constitutional authority. To verify this instinct, I asked the Library of Congress to research this point. I will submit the report of the Library of Congress for the record. Before I do, I feel this committee will be interested in some of the key findings, as they are an encouraging reminder to the members of the constitutional rights of the Congress to "curtail tribal power or require Secretarial review."

In the Kerr-McGee case, the corporation contended that the Indian Reorganization Act and the Indian Minerals Leasing Act required Secretarial approval for a tribal tax. Since neither of these acts specifically mentions Secretarial approval and the related regulations have similar omissions, and no other authority was found to impose a requirement of Secretarial approval, the Navajo Tribe is free to impose tax ordinances without submitting them to the Secretary of Interior for approval. These omissions by the Congress to require specific Secretarial approval combined with other cases upholding tribal rights to impose taxes as a matter of tribal sovereignty, led the court to conclude that the tribe retained the taxing authority without Secretarial approval. The Supreme Court decision reads, "...we conclude that the Tribe has the authority to impose a severance tax on the mining activities of petitioners as part of its power to govern and pay for the costs of self-government."

With regard to the question of Secretarial approval and the role of Congress, the Congressional Research Service makes the following observation:

> Because of its power over Indians through the Indian commerce clause, U. S. Constitution, Article 1, section 8, clause 3, and the Indian treaty power, U. S. Constitution, Article 2, clause 2, and because the Supreme Court has recognized its power over Indian affairs as virtually unlimited, Congress is free to require by statute that the Secretary of Interior approve all tribal taxing ordinances. It would also be free to enact an Indian tribal taxing code and require tribes to adopt it.

In concluding, CRS found Secretarial approval may not be necessary "as long as no federal statute, federal regulation, or tribal constitutional provision does require Secretarial approval. ...Should a need to curtail tribal power or to require Secretarial review emerge, Congress may do so by statute or may encourage the executive branch to test whether its wide delegations of authority in Indian affairs are sufficient to promulgate regulations requiring Secretarial review."

I believe, Mr. Chairman, that this study supports my initial thought that the powers of Congress and the Executive Branch are sufficient to impose Secretarial approval if we deem it necessary in any field of Indian policy. While I support the general aim of self-determination, I would encourage this committee and the Congress to exercise their full powers in the pending question of Indian gambling activities on Indian reservations, despite the claims of some that the courts have held otherwise.

PREVALENCE OF STATE LAW

My second major concern about Indian gambling is the question about the role of state law. The pending Santa Ana Pueblo request to allow pari-mutuel dog racing in New Mexico is of paramount concern in New Mexico and has important ramifications for the national policy picture. If the pueblo of Santa Ana is allowed to conduct an activity that has been declared to be illegal in New Mexico by the State Attorney General, I am afraid that our worst fears about creating new havens for all kinds of gambling can begin to come true. There is a parallel concern about the lawfulness of jai alai in Arizona. Other gaming activities such as keno, black jack bingo, and satellite bingo are unlikely to be endorsed by state gambling policy and law. Yet, we hear rumblings about the "shield of federal protection" from state law enforcement. An assistant attorney general of California testified yesterday that he had difficulty obtaining permission to review gambling operations run by non-Indians who claimed immunity as employees of the tribes. This shield must be clarified and specified or it will be expanded to areas as yet not dreamed of by policy makers.

The memorandum of the New Mexico Attorney General's office, which I will submit for the record, is unequivocal in its findings:

> Operating a facility which allows gambling on dog races is clearly prohibited under New Mexico law. This prohibition is part of New Mexico's criminal law, is punished with criminal sanctions and has no exception for any form of dog racing. New Mexico criminal laws do not apply directly to reservation Indians. However, it is a crime under federal law to engage in activities which violate the law of the state within which a reservation is located. ... This memorandum...concludes that pari-mutuel dog racing is a federal crime on New Mexico Indian reservations.

The in-depth analysis explains the role of three federal statutes--Public Law 280, the Assimilative Crimes Act (known as the Indian Country Crimes Act), and the Organized Crime Control Act--as a back-drop for determining whether or not a crime on an Indian reservation is a federal crime. The major distinction made in this analysis is "whether a prohibited act is a violation of criminal or civil-regulatory law."

Thus, the acid test is whether or not pari-mutuel dog racing is a criminal or civil violation. The findings are clear:

> If conducting pari-mutuel dog racing is a crime in New Mexico, it will be a federal crime under the Assimilative Crimes Act to conduct such races on an Indian reservation.
>
> The Organized Crime Control Act...is designed to make large illegal gambling operations a federal crime. State law determines whether the gambling operation is illegal. If illegal under state law, it is punished by federal law.

With regard to the New Mexico law, the finding is equally clear.

> ...placing bets or accepting bets is prohibited by New Mexico law. The prohibition is part of the Criminal Code and has criminal penalties. It is impossible to read these provisions as anything but criminal and prohibitory under the legislative intent analysis of the cases developed under Public Law 280.

The memorandum further reads, "The statute clearly provides an exception only for pari-mutuel horse racing.... The New Mexico legislature has clearly made pari-mutuel dog racing a crime....It was clearly the intent of the New Mexico legislature to prohibit all pari-mutuel dog racing. It is perfectly appropriate for a legislature to allow certain forms of pari-mutuel wagers while absolutely prohibiting others."

I hope, Mr. Chairman, that this analysis is helpful in shaping the law we need to properly restrict gambling on Indian reservations. Again, I compliment you for this timely hearing. It is my intention to work with you and this committee to draft the best law possible to continue to encourage regulated enterprises that are truly beneficial to the Indian people of this nation and respectful of the laws of this nation and its fifty states. I look forward to passing a bill that will have the balanced ingredients necessary to properly promote Indian initiatives while protecting the rights of Indians and non-Indians alike.

INTRA-OFFICE MEMORANDUM

TO: Paul Bardacke, Attorney General

THRU: Charlotte Uram, Division Director

FROM: Bruce Thompson, Assistant Attorney General

DATE: January 30, 1985

RE: Pari-Mutuel Betting on Dog Races at a Tribally Sanctioned Track in the State of New Mexico
A.G. Ref. No. 30504/378

The Santa Ana Pueblo is contemplating the construction and operation of a dog racing facility on Pueblo land. Income from pari-mutuel wagering on the races provides the incentive for the facility. The legality of pari-mutuel betting on dog races at such a track is a paramount issue. The Pueblo is seeking Bureau of Indian Affairs approval for the facility. The Pueblo and the non-Indian corporation which seeks to manage the facility have submitted to the Bureau of Indian Affairs analyses of law arguing that pari-mutuel dog racing is legal. (Copies attached) This memorandum consists of an independent analysis of the issue combined with an analysis of those memoranda of law.[1]

This memorandum will not address the legal options available to the State to challenge the facility. The memorandum will not analyze the related issue of whether tribally authorized liquor sales at the facility would be legal in the absence of a state liquor license.

Summary: **Operating a facility which allows gambling on dog races is clearly prohibited under New Mexico law. This prohibition is part of New Mexico's criminal law, is punished with criminal sanctions and has no exception for any form of dog racing. New Mexico criminal laws do not apply directly to reservation Indians. However, it is a crime under federal law to engage in activities which violate the law of the state within which a reservation is located.** Pari-mutuel dog racing on an Indian reservation should be a federal crime.

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[1] The memorandum submitted by the Pueblo was prepared by Mr. B. Reid Haltom and will be called the Haltom memorandum. The managers memorandum was prepared by Carol A. Connor and will be called the Connor memorandum. The Haltom memorandum deals with many issues beyond the scope of this memorandum.

This memorandum first identifies those federal laws which make it a federal crime to violate state criminal gambling laws on a reservation. The memorandum then analyzes why the relevant New Mexico statutes which prohibit pari-mutuel dog racing are criminal laws the violation of which on a reservation would be federal crimes. The memorandum examines the error in the Haltom and Connor memoranda analyses and concludes that pari-mutuel dog racing is a federal crime on New Mexico Indian reservations.

1. Public Law 280

In 1953 Congress enacted what is commonly known as Public Law 280. Act of August 15, 1953, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C §1162, 25 USC. §§1321-1326, 28 U.S.C. §1360). Public Law 280 has no direct application in New Mexico. However, one of the issues surrounding Public Law 280 is whether particular state gambling statutes are civil or criminal. The analysis of whether a state gambling statute is civil or criminal is also the critical issue in this memorandum, because the relevant federal criminal statutes only make an act a federal crime if it is a violation of state criminal law but not state civil law. The analysis of whether a particular statute is civil or criminal is the same under Public Law 280 as under the statutes relevant to this memorandum. Since most of the case law on whether particular gambling statutes are civil or criminal has developed under Public Law 280, it is necessary to have an understanding of Public Law 280 and the cases decided under Public Law 280.

Public Law 280 created a mechanism whereby states could assume "jurisdiction over...offenses committed within such Indian country...to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State..."[2] 25 U.S.C. §1321, and "jurisdiction over any or all such civil causes of action...to the same extent that such State has jurisdiction over other civil causes of action..." 28 U.S.C. § 1322 Sixteen states were granted or have assumed some measure of jurisdiction over some or all of the reservations within their boundaries. These states are collectively known as Public Law 280 states. New Mexico assumed no jurisdiction over reservation activities pursuant to Public Law 280.[3] Chino v. Chino, 90 N.M. 203, 206, 561 P.2d 476,479 (1977).

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[2] Public Law 280 had numerous special provisions by which specific states were given or could assume criminal and civil jurisdiction over Indian reservations. None of these provisions is relevant to this memorandum.

In Bryan v. Itasca County, 426 U.S. 373 (1976), the Court determined the scope of civil authority granted over Indian reservations pursuant to Public Law 280. In Bryan the State of Minnesota was attempting to tax the personal property of a reservation Indian claiming that the grant of civil jurisdiction under Public Law 280 authorized such a tax. The Court disagreed. The Court held that the grant of civil jurisdiction under Public Law 280 only applied to "private civil litigation involving reservation Indians in state court." Id. at 385. States were not granted that civil jurisdiction which went beyond private law. Civil-regulatory authority was thus not granted to the states. Grants of criminal jurisdiction under Public Law 280 were unaffected by Bryan.

Under Public Law 280 the question of whether a particular activity is subject to punishment under state law depends on if there has been a failure to comply with civil-regulatory laws or with criminal laws. If the violation was of a civil-regulatory law, the state has no jurisdiction under Public Law 280's grant of criminal jurisdiction. See, e.g., Bryan v. Itasca County, 426

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[3] In 1968 Public Law 280 was amended to preclude states from assuming further jurisdiction under that act without tribal consent. Pub. L. No. 90-284, Title IV, §402, 82 Stat. 79(1968). As a practical matter it is safe to assume that New Mexico will never obtain Public Law 280 jurisdiction so long as tribal approval is required. The Connor memorandum at page 3 claims that absent a grant of jurisdiction by Congress "States may directly enforce neither its criminal law nor its civil regulatory authority on the reservations." While this statement is correct as to Indians on an Indian reservation, State v. Begay, 63 N.M. 409, 412,320 P.2d 1017, 1020 (1958) cert. denied, 357 U.S. 918 (1958), it is not necessarily true with regard to non-Indians on a reservation. United States v. McBratney, 104 U.S. 621 (1882). An analysis of whether the State has jurisdiction to prosecute non-Indians engaged in pari-mutuel betting on dog races on tribal land in violation of State law is outside the scope of this memorandum. Similarly, State authority to prosecute non-Indians involved in the financing or management of such an operation is not discussed. The primary focus of the Haltom memorandum is on state jurisdiction. This memorandum takes no position on the conclusion of the Haltom memorandum. It should be noted that this memorandum does take exception with the major premise of the Haltom memorandum, that pari-mutuel dog racing is not a criminal activity under New Mexico statutes.

U.S. 373,387 (taxes are civil-regulatory); United States v. Marcyes, 557 F.2d 1361, 1364 (9th Cir. 1977) (licenses and permits are civil regulatory); Santa Rosa Band of Indians v. Kings County, 532 F.2d 655,662 (9th Cir., 1975) cert. denied 429 U.S. 1038 (1977) (zoning is civil-regulatory). If the violation is criminal-prohibitory, a state has jurisdiction under Public Law 280.[4]

The "bingo cases" all arose in Public Law 280 states: Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981), cert. denied 455 U.S. 1020 (1982) arose in Florida, Barona Group of Capitan Grande Band of Mission Indians v. Duffy, 694 F.2d 1185 (9th Cir. 1982), cert. denied 461 U.S. 929 (1983), arose in California and Oneida Tribe v. State of Wisconsin, 518 F. Supp. 712 (W.D. Wisc. 1981), arose in Wisconsin. In each of these cases the issue was whether state jurisdiction had been extended pursuant to Public Law 280 to tribal bingo games. In each of these Public Law 280 cases the state's jurisdiction hinged on whether the state law dealing with bingo was civil-regulatory or criminal-prohibitory. While Public Law 280 is inapplicable in New Mexico the analysis of whether an activity is controlled by state civil or criminal law is important in determining the applicability of those federal statutes which make a violation of state criminal law a violation of federal law. These Public Law 280 cases will be analyzed later.

2. The Assimilative Crimes Act

18 U.S.C. §1152 commonly known as the Indian Country Crimes Act provides that criminal law generally applicable to federal lands shall also apply to Indians and non-Indians on Indian lands.

> Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any

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[4] The term "civil-regulatory" arose as a distinction to civil laws in general. The issue for the present memorandum is actually whether a particular statute is criminal or civil. Courts use the civil-regulatory versus criminal-prohibitory dichotomy and the civil versus criminal dichotomy interchangeably as will this memorandum. Use of the terms regulatory and prohibitory do provide some insight into the types of statutes which are civil and which are criminal.

> place within the sole and exclusive jurisdiction of the United States...shall extend to the Indian country.

18 U.S.C. §1152. [5]

One of the general laws which is applied to Indian Country under the Indian Country Crimes Act is the Assimilative Crimes Act, 18 U.S.C. §13. *Williams v. U.S,* 327 U.S. 711, 713 (1946). The Assimilative Crimes Act makes state criminal law applicable to federal lands to the extent such state laws are not inconsistent with general federal criminal laws.

> Whoever [in a federal enclave] is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State...in which such [federal enclave] is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

18 U.S.C. §13.

Since there is no general federal gambling statute, state criminal laws with respect to gambling are made applicable to Indian reservations pursuant to the Assimilative Crimes Act. [6] It should be noted that a violation of these state gambling laws on a reservation is a federal not a state crime. Only state criminal law and not state civil-regulatory law is made applicable through the Assimilative Crimes Act. *United State v. Marcyes,* 557 F.2d 1361 (9th Cir. 1977). The same issue as exists under Public Law 280, whether a prohibited act is a violation of criminal or civil-regulatory law,[7] is therefore an issue under the Assimilative Crimes Act.

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[5] The Indian Country Crimes Act provides an exception for "offenses committed by one Indian against the person or property of another Indian." 18 U.S.C. §1152. An argument can be made that this exception extends to consensual or victimless crimes involving non-Indian participants. *See* F. Cohen, Handbook of Federal Indian Law (1982 ed.) at 290-92. The argument is sufficiently speculative that it will not be considered here. **The Haltom memorandum denies such an exception.** Haltom Memorandum at 9.

[6] The Organized Crime Control Act of 1970, 18 U.S.C. §1955, discussed below, makes it a federal crime to violate state gambling laws in a large scale operation. Whether violation of that law would preclude prosecution under the Assimilative Crimes Act appears to be an open question. Since the issue discussed in this memorandum is whether Indian dog racing is legal, the issue of which federal law or laws should provide the basis for prosecution need not be discussed.

If conducting pari-mutuel dog races is a crime in New Mexico, it will be a federal crime under the Assimilative Crimes Act to conduct such races on an Indian reservation. The issue is whether the prohibition on such gambling is civil or criminal under New Mexico law.

3. The Organized Crime Control Act

The Organized Crime Control Act of 1970, 18 U.S.C. §1955, is a general federal criminal statute. The statute is designed to make large illegal gambling operations a federal crime. State law determines whether the gambling operation is illegal. If illegal under state law, it is punished by federal law. The Act "was designed to aid the enforcement of state law, especially where state enforcement is disabled by the corruption of state officials...." *United States v. Farris,* 624 F.2d 890 (9th Cir. 1980) *cert. denied,* 449 U.S. 111 (1981).

> (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more that $20,000 or imprisoned not more than five years, or both.
>
> (b) As used in this section --
>
> (1) "illegal gambling business" means a a gambling business which --

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[7] That the split between civil-regulatory and criminal-prohibitory is the same under Public Law 280 as under the Assimilation Crimes Act seems clear. The Connor memorandum seems to argue that the civil versus criminal split is different under the Assimilative Crimes Act. Memorandum at 5. The source or nature of the difference is not clear in that memorandum. There appears to be no support for an argument that the standards are different under Public Law 280 and the Assimilative Crimes Act for drawing the civil versus criminal distinction.

> (i) is a violation of the law of a State or political subdivision in which it is conducted;
>
> (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
>
> (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.
>
> (2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.
>
> (3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States...
>
> (e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

18 U.S.C. §1955.

While the Act does not specifically mention that it is applicable to Indian reservations, federal criminal laws of general applicability apply on Indian reservations. *United States v. Wheeler*, 435 U.S. 313, 330 n. 30 (1978); *United States v. Farris*, 624 F.2d at 893 (Applying the Organized Crime Control Act to an Indian gambling operation). Again, under the Organized Crime Control Act as under the Assimilative Crimes Act, the issue is whether the gambling activity is a violation of state criminal law or state civil law.[8]

4. New Mexico's Prohibition Against Pari-Mutuel Dog Racing is a Criminal Statute

The general rule established above is that if an act is criminal under state law, it is a federal crime to commit that act on an Indian reservation within that state. It is therefore necessary to determine whether the New Mexico statute dealing with pari-mutuel dog racing is a criminal statute.

In other contexts the United States Supreme Court has established standards for determining when a penal provision is civil and when it is criminal.[9] In these cases the Supreme Court has evolved a two part test for determining if a statute is civil or criminal: (1) whether the legislative body intended to make the violation of the statute civil or criminal is the controlling factor, and (2) if the legislative body intended to make the violation civil, is the penalty so out of line so as to make the violation of the statute criminal in fact. U.S. v. Ward, 448 U.S. 242, 248-49 (1980). The first part of this test, legislative intent, is also the test developed in those cases dealing with criminal law jurisdiction over Indian reservations.

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[8] The Connor memorandum argues that Indian pari-mutuel dog racing may be under the exception of subsection (e). It is unlikely that dog racing will be considered "any bingo game, lottery or similar game of chance...." The Connor memorandum also argues that since one tribe rather than five or more persons are conducting the business it may not fit under the Section (b) (1) (ii) definition of "illegal gambling business". The argument is imaginative but not persuasive. This issue need not be examined here. To the extent that the Organized Crime Control Act is inapplicable, the Assimilative Crimes Act will be applicable. See footnote 5.

[9] These cases generally arise in situations involving double jeopardy where a question may arise as to whether a forfeiture or fine may be assessed against a person who has been acquitted of a criminal act.

The cases distinguishing civil and criminal statutes for purposes of Indian jurisdiction developed without reference to the Supreme Court decisions, but reached a similar result. These cases conclude, as did the Supreme Court, that the determining factor is the intent of the legislature in enacting the statute. A caveat is often added to these cases that if the actual intent of the legislature is to provide a civil-regulatory penalty and the state makes the violation of the statute criminal in order to control tribal affairs, the court will look to the actual intent of the legislature. Marcyes, 557 F.2d at 1364.

The bingo cases support the position that it is legislative intent which is determinative as to whether a state statute is civil-regulatory or criminal-prohibitory. In Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981), the court relied on the fact that when originally passed the Florida bingo statute provided no penalties, that there still were no penalties for playing bingo at an illegal game, only for conducting such a game, and that bingo is allowed when conducted in conformity with Floride licensing procedures. The court was looking for "the public policy of the state on the issue of bingo and intent of the legislature in enacting the bingo statute." The court found that it was not the intent of the legislature to prohibit bingo. The court went on to note that "[l]egislative intent determines whether the statute is regulatory or prohibitory...." Id. at 315.

Oneida Tribe v. State of Wisconsin., 518 F. Supp. 712 (W.D. Wis. 1981), relied on the reasoning of Butterworth. The court looked at legislative intent and was particularly persuaded by the fact that playing bingo was always legal but conducting a non-regulated game was punished.

> Defendants' argument misses one important point: the general populace of the state of Wisconsin is allowed to play bingo. Moreover, the state law governing bingo appears to provide penalties for those who illegally conduct bingo games rather than for those who merely play in such games. [citation omitted] Thus, because it appears that Wisconsin's bingo laws are not designed to prohibit the

> general populace from playing bingo, it seems that those laws are regulatory rather than prohibitory....

Id. at 719.

Both Butterworth and Oneida stand for the proposition that it is the intent of the legislature that determines if an activity is criminal or civil. If the penalties associated with an activity exist because of a failure to comply with state regulation of an otherwise valid activity, then this indicates a legislative intent to have violations treated civilly rather than criminally.

Barona Group of Capitan Grande Band, Etc. v. Duffy, 694 F.2d 1185 9th Cir. (1982), the third of the bingo cases, relied on Butterworth and Oneida. In California, the bingo statute specifically allowed for charitable bingo if provided by city and county ordinances. The court found no general prohibition against playing bingo. Duffy at 1189. The court found that bingo was legal but regulated as to its money making aspects. While the Duffy case is less clear than the other bingo cases that legislative intent controls the civil versus criminal determination, it appears to be entirely consistent with Butterworth and Oneida.

An example of the use of legislative intent to determine if a matter is criminal or civil comes from a comparison of State v. Lemieux, 106 Wis. 2d 484,317 N.W. 2d 166 (1982), with State v. Folstrom, 331 N.W. 2d 231 (Minn. 1983). Both cases arose under Public Law 280. In State v. Folstrom the act committed was carrying a pistol without a permit. The court found that the prohibition was part of the criminal code, the act was defined as a crime and therefore was a crime. In State v. Lemieux the court found that the act of transporting an uncased or loaded firearm in a vehicle was regulated rather then criminal. The prohibition was not a part of the criminal code, was not punishable by criminal sanctions (a violation was punished by a forfeiture of not over $100) and the only purpose for the statute was to limit methods of hunting, an otherwise legal activity. Despite prohibitory language in the statute the court found the legislative intent to regulate.

In determining whether New Mexico prohibits or regulates pari-mutuel dog races, it is necessary to examine the relevant statutes. Sections 30-19-1 thru 30-19-15 NMSA (1978) set forth comprehensive statutory prohibitions with respect to gambling.

> As used in Article 19 [30-19-1 to 30-19-15 NMSA 1978] of the Criminal Code:
>
> A. "bet"' means a bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement. A bet does not include...
>
> (4) betting otherwise permitted by law...
>
> D. "gambling place" means any building or tent, any vehicle, whether self-propelled or not, or any room within any of them, one of whose principal uses is:
>
> (1) making and settling of bets;
>
> (2) receiving, holding, recording or forwarding bets or offers to bet;
>
> (3) conducting lotteries; or
>
> (4) playing gambling devices.

30-19-1 NMSA (1978)

> Gambling consists of:
>
> A. making a bet;
>
> B. entering or remaining in a gambling place with intent to make a bet, to participate in a lottery or to play a gambling device...
>
> Whoever commits gambling is guilty of a petty misdemeanor.

30-19-2 NMSA (1978)

> Commercial gambling consists of either:
>
> A. participating in the earnings of or operating a gambling place;
>
> B. receiving, recording or forwarding bets or offers to bet;

> C. possessing facilities with the intent to receive, record or forward bets or offers to bet;
>
> D. for gain becoming a custodian of anything of value, bet or offered to be bet...
>
> Whoever commits commercial gambling is guilty of a fourth degree felony.

30-19-3 NMSA (1978)

Without more it is clear that placing bets or accepting bets is prohibited by New Mexico law. The prohibition is part of the Criminal Code and has criminal penalties. It is impossible to read these provisions as anything but criminal and prohibitory under the legislative intent analysis of the cases developed under Public Law 280. Betting is prohibited, not regulated.

There are however a number of exceptions to New Mexico's gambling statutes. For instance, pari-mutuel horse racing is permitted. 60-1-1 thru 60-1-24 NMSA (1978). Section 60-1-10 NMSA, the section which provides an exception to the gambling prohibition for pari-mutuel horse racing, provides in part:

> A. Within the enclosure where any horse races are held and where the licensee has been licensed to use the pari-mutuel method or system of wagering on such races, the same shall be lawful but only within the enclosure where such races are held.
>
> B. The sale to patrons, present on the grounds, of pari-mutuel tickets or certificates on the races, or the use of the pari-mutuel system, shall not be construed to be either betting, gambling or pool selling, and is authorized under the conditions provided by law....
>
> F. Existing statutes of this state against horse racing on Sundays, on bookmaking, pool selling or other methods of wagering on the racing of horses, are not repealed, but are hereby expressly continued in effect, with the exception that

> the operation of the pari-mutuel method or system in connection with the racing of horses, when used as provided by law, is lawful.

The exception for pari-mutuel horse racing is, under the general rules applicable to statutory construction, to be narrowly construed. Bushnell v. Superior Court of Maricopa County, 102 Ariz. 309, 428 P.2d 987 (1967); Morrison v. School District No. 48, 53 Or. App. 148, 631 P.2d 784 (1981). The statute clearly provides an exception only for pari-mutuel horse racing which should not extend to pari-mutuel dog racing. This interpretation is consisted with Schnoor v. Griffin, 79 N.M. 86, 439 P.2d 922 (1968) where the New Mexico Supreme Court held that pari-mutuel wagers not within the specific exception providing for horse races were a violation of New Mexico's anti-gambling statutes. The New Mexico Court quoted from a New York case.

> This language seems to provide an exclusive lawful means of making a pari-mutuel bet... When pari-mutuel betting departs from the manner prescribed by the [act] it becomes as unlawful as any other form of gambling.

Application of Stewart et al., 22 N.Y.S. 2d 164, 167 (1940) (dealing with placing bets away from the track)

The New Mexico legislature has clearly made pari-mutuel dog racing a crime. The prohibition is part of the Criminal Code. The penalties are criminal. It is illegal both to bet and to accept bets on such races. The case is not analogous to the bingo cases where it was legal to place the bets, it was legal to conduct the game if pursuant to state regulations and violations were not a part of the criminal code but of the code authorizing bingo. Penalties in the bingo cases were to force compliance with the procedures for conducting bingo games, penalties under New Mexico's anti-gambling statutes are to prohibit such gambling.

It was clearly the intent of the New Mexico legislature to prohibit all pari-mutuel dog racing. It is perfectly appropriate for a legislature to allow certain forms of pari-mutuel wagers while absolutely prohibiting others. Northwest Greyhound Assoc v.State of Washington, 8 Wash App. 314, 506 P.2d 878 (1973) (rejecting argument that it was impermissible to allow horse racing while making dog racing a crime.)

The Connor memorandum's argument that New Mexico law does not make pari-mutuel dog racing a crime is based on its reading of three New Mexico cases. These cases supply no such support:

1.) State v. Las Cruces Elks Club, 54 N.M. 137, 215 P.2d 821 (1950), is cited for the proposition that sections 30-19-1 et seq. NMSA (1978) have been interpreted only to apply to prohibit cards, dice, slot machines, punch boards, etc. The statute referred to in Las Cruces Elks specifically provided it was applicable to dice, cards, punch boards, slot machines or any other gaming device. The statute in Las Cruces Elks was specifically repealed in 1963 by the enactment of the present general gambling statute.

2.) Patton v. Fortuna Corporation, 68 NM 40, 357 P.2d 1090 (1960), states that the horse racing statute "legalizes pari-mutuel betting under fixed conditions, and declares that it shall not be construed as gambling." The quoted language is to the effect that pari-mutuel gambling, if conducted under fixed conditions (ie. on horses) is not gambling. This dicta in Patton should not be read to legalize all pari-mutuel wagering. Such a reading is contrary to the statutory scheme and to the analysis in Schnoor. No one has attempted to use this language in Patton to claim all pari-mutuel betting is legal in New Mexico. The actual issue in Patton was the standing of a citizen to challenge the constitutionality of the statute allowing horse tracks.

3.) Schnoor v. Griffin, 79 N.M. 86, 439 P.2d 922 (1968) dealt with the issue of whether bets placed by a person not at the track were authorized by the horse racing provision. The court stated: "It would seem apparent that it was the intention of the legislature to exempt pari-mutuel betting from the general provisions of the gambling laws only when done by patrons who are physically present at the track." Id. at 88. The Connor memorandum taking this language out of context, argues that the only limitation on pari-mutuel betting is that it be done by persons at the track. As previously noted, Schnoor does not support the Connor memorandum because it in fact stands for the proposition that any betting, not in conformity with the express exception in the horse racing statute, is a crime.

The Assimilative Crimes Act and the Organized Crime Control Act, as discussed previously, make violations of state criminal laws with respect to gambling, federal crimes when the acts are conducted on a reservation. Pari-mutuel dog racing is a crime when conducted on New Mexico Indian reservations.

5) The Role of Public Policy

The Connor memorandum recognizes that legislative intent controls the question of whether a state statute is civil or criminal. That memorandum confuses the issue, however, by concluding that there is another consideration, "public policy," separate from legislative intent, which determines whether a statute is civil or criminal. The confusion over public policy needs to be addressed.

The Connor memorandum demonstrates its understanding of public policy in its discussion of United States v. Farris. The memorandum explains the decision in Farris:

> The [Indian] casinos were unlicensed, attracted many non-Indians, were very profitable, and were characterized as large-scale and professional gambling businesses. The Court found that although the casinos were outside the reach of Washington laws, the state had strong public policy against such large-scale operations, even though Washington law itself did not say as much.

Connor memorandum at 5. The memorandum later explains:

> Although the statute says the gambling operation must violate state law, the Courts have shown, as stated above, that they are willing to also consider whether state public policy was also violated.

Id. at 6.

The memorandum appears to argue that a public policy violation can of itself make an act criminal. The result of this public policy analysis is that the memorandum argues that if an activity is not against public policy then activities which are similar to activities which are not against public policy should also not be against public policy. "The fact that the race being wagered upon is run by dogs and not by horses should be of no consequence." Id. at 8. This public policy argument has a certain appeal and would appear to be consistent with the bingo cases which provide that once bingo is allowed in a state, variations on the state authorized method of playing bingo are allowed on an Indian reservation. However, the public policy argument as advanced by the Connor memorandum has no support in the case law and on closer analysis leads to unreasonable results.

The memorandum's error begins with its analysis of Farris. The Connor memorandum claims Farris was decided under the Assimilative Crimes Act and that the issue was whether large scale gambling should be prohibited despite the lack of a specific state statutory prohibition. Farris was in fact decided under the Organized Crime Control Act and there was a specific state statute which prohibited the activity.

The issue in Farris was whether the Organized Crime Control Act, 18 U.S.C. 1955, applies to Indians on a reservation. Section 1955 applies to gambling "[in] violation of the law of the State." The Indian defendants in Farris argued that since state laws prohibiting gambling do not apply to Indians on a reservation because the state never assumed jurisdiction[10] under Public Law 280, that Indians could not violate §1955. Farris held that §1955 was intended to apply on Indian reservations when Indians violated the gambling laws of the State in which the reservation was situated.

The court in Farris stated that the statutory requirement that the gambling be a violation of the law of the State:

> was not to exempt from federal criminal liability those gambling-business operators who might be beyond the reach of a state's criminal jurisdiction, but rather to exempt from the federal statute the operators of gambling businesses that are not contrary to a state's public policy on gambling.

Farris at 895. This language makes clear that public policy is identical to legislative intent as expressed by a state's legislature. Farris expressed this even more clearly.

> Washington public policy prohibits the type of gambling business conducted by appellants. See Wash. Rev. Code §§9.46.010, 9.46.220.

Farris 624 F.2d at 895. Still later:

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[10] Washington State has assumed Public Law 280 jurisdiction over reservations for some purposes. It has not, contrary to the Connor memorandum's implications, assumed criminal jurisdiction over on-reservation Indians. Farris at 895. For purposes of criminal jurisdiction, Washington is not a Public Law 280 state.

> [Section 1955 is limited by] the desires of particular states, which on the subject of gambling are expressed by the lack of prohibitory laws.

Id. at 895.

Other cases confirm that public policy is not distinct from legislative intent. In Butterworth the court noted that the regulation of bingo was civil. However, the court recognized that the legislature could have made professional, money making bingo operations criminal. Id. at 314. The fact that bingo is regulated therefore does not mean that if the legislature had so intended it could not have made certain aspects of bingo criminal. The Butterworth court specifically stated:

> [T]he real distinction between the cases lies in the reference to each state's law as to whether the statutes in question were prohibitory or regulatory. Legislative intent determines whether the statute is regulatory or prohibitory....

658 F.2d at 315. It is the specific statute that must be analyzed to determine if the activity is civil or criminal, not some generalized notion of public policy.

United States v. Marcyes, 557 F.3d 1361 (9th Cir. 1977), involved the issue of whether Washington State laws as to the possession of certain unmarked and unclassified fireworks were regulatory or prohibitory. The court noted that the State allowed such fireworks in certain circumstances. The fact that the activity, possession of certain fireworks, was substantially similar to permitted activities did not make the statute regulatory. the court found that the legislative intent in enacting the statute was to "prohibit the general possession and/or sale of dangerous fireworks and is not primarily a licensing law." Id. at 1364.

There is absolutely no support in the cases for an argument that public policy exists separate and apart from legislative intent as expressed in a state's statutes.[11] Such an argument, as shown below, would lead to unreasonable results.

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[11] Public policy does exist apart from legislative intent in other contexts. In Moapa Band of Paiute Indians v. Department of Interior, 747 F.2d 563 (9th Cir. 1984), the court held that it was appropriate for the Secretary of Interior to consider public policy in exercising his discretion to approve or disapprove a tribal ordinance allowing prostitution. Moapa did not deal with the issue addressed in this memorandum: whether a tribal ordinance, once approved, would be a violation of federal criminal statutes.

The Connor memorandum argues that any pari-mutuel wagering is not criminal if conducted on the premises where the event deciding the outcome of the bet is conducted. Connor memorandum at 7-8. Pari-mutuel is a form of betting on competitors where a pool of money is divided among the winners after withdrawal of some portion of the money bet for the management. While horse and dog racing are the common forms of pari-mutuel betting, jai-alai would also appear to be legal under the argument of the Connor memorandum. If, as the Connor memorandum argues, the nature of the event used to determine payoffs on pari-mutuel bets should not be a factor in determining if an activity is legal or illegal then betting on any athletic event would be legal. Under that argument pool betting on any event, even unrelated to sports, is sufficiently close to pari-mutuel betting on horses to make it a regulated activity and therefore legal on the reservation. It is relatively easy to structure roulette and other casino style gambling as a pari-mutuel bet. There is no obvious limit to what is legal on an Indian reservation under the Connor memorandum analysis.

Under the Connor memorandum, betting on horse races is legal in New Mexico and the method for conducting such betting is regulated. Off-track betting would thus appear to be legal. The number of combinations and permutations of gambling activities which would be legal under such an analysis because of their similarity to activities legal under the bingo and lottery exceptions to the general anti-gambling statutes become staggering.

The appropriate standard for determining whether a penalty is criminal or civil is to look to the legislative intent in enacting the statute which provides the penalty. In New Mexico the specific prohibition against dog racing is found at 30-19-1 through 30-19-3. This provision is a criminal provision, it is part of the criminal code, it prohibits betting on or receiving bets on dog races. This criminal provision is clearly made applicable to on-reservation tribal gambling by either the Assimilative Crimes Act, the Organized Crime Control Act or both.

The major advantage to this legislative intent test as developed by the courts as opposed to the public policy test as advocated by the Connor memorandum, is clarity. In each of the bingo cases the courts noted it was a close and difficult question as to whether bingo was regulated or criminal. At least in those cases the courts had specific statutes to analyze. Under the Connor memorandum method for determining civil-regulatory versus criminal-prohibitory the distinction becomes hopelessly blurred.

The Haltom memorandum uses the term public policy in a manner which is not inconsistent with this memorandum's position. That memorandum uses public policy as the test to be applied to a statutory enactment to determine legislative intent. Public policy is described as a six part test to be applied to statutes:

> The policy questions are whether the activity is allowed for the general public; whether the profits from the proposed activity are to be used for purposes generally allowed by the State; whether the statute contains prohibitory language; whether the statute contains criminal penalties; whether the statute is primarily a licensing law; whether the statute provides penalties for engaging in the activity or only for activities not in accordance with the statute.

Haltom memorandum at 9. However, the Haltom memorandum applies this test to the horse-racing statute rather that to the New Mexico statutes that preclude pari-mutuel dog racing, §§ 30-19-1 through 30-19-3. Applying the test to the proper statutes leads to the conclusion that pari-mutuel dog racing is not an activity in which the general public can engage, the statute is prohibitory in its language, the statute has criminal penalties, the statute is not a licensing law, and the statute precludes all pari-mutuel dog racing not just those pari-mutuel dog races not in accord with some statute.

Conclusion: If the New Mexico statute which penalizes betting on dog races is a criminal statute rather than a civil regulation it defines a federal crime under either or both the Assimilative Crimes Act or the Organized Crime Control Act. The specific New Mexico laws which penalize pari-mutuel wagering on dog racing are New Mexico's anti-gambling statutes. The New Mexico legislature's intent in passing those statutes controls as to whether the statutes are civil or criminal. New Mexico's anti-gambling statutes at 30-19-1 through 30-19-3 were clearly intended to be criminal provisions. Dog racing should be a violation of federal law if conducted on an Indian reservation.

BT:oq

Connor Memorandum

MEMORANDUM OF LAW

ISSUE: Whether pari-mutuel wagering at a tribally sanctioned greyhound race track is permissible in the state of New Mexico

ANALYSIS

The issue of whether pari-mutuel wagering on greyhound races conducted on Indian reservations in New Mexico is a novel question. The laws that must be considered are 18 USC Section 1955 et seq; 18 USC 13; Section 30-19-1 et seq, NMSA 1978; and Section 60-1-10 NMSA 1978.

In cases which have dealt directly with the question of regulation of gambling on reservations, the Courts have dwelt upon the nature of the state's gambling regulations and inquired as to whether they were merely civil and regulatory in nature, as opposed to being criminal and prohibitory. In Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir., 1981), the Fifth Circuit Court of Appeals found that Florida bingo laws were civil and regulatory in nature because those laws permitted bingo to be run by certain groups in a restricted manner, and that Florida had acknowledged certain benefits of bingo and had chosen to regulate rather than prohibit; the mere fact that state bingo statutes had included penal sanctions did not automatically mean the statutes were criminal and prohibitory in nature -- legislative intent was the critical factor and the court found such intent was only regulatory in focus.

The state of Florida was therefore held to be without power to enforce its regulatory gambling authority over reservation gambling activities.

In Oneida Tribe v. State of Wisconsin, 518 F. Supp. 712

(W.D. Wisc., 1981), where the issue was whether the State of Wisconsin could enforce its bingo laws on the Oneida Indian reservation, the District Court engaged in an analysis of the same criminal vs. civil dichotomy, concluding that Wisconsin bingo laws were civil and regulatory in nature, especially when viewed against the backdrop of tribal sovereignity. An important factor in the Court's analysis was that the tribe had adopted a comprehensive bingo ordinance and that gambling proceeds were to be used solely to promote the health, education and welfare of the tribe, such proceeds being a vital share of tribal revenues. The Court also found that Wisconsin bingo laws only provided penalties for those who conducted illegal games and not for the players of the games, such a scheme being further evidence of regualtory as opposed to prohibitory intent.

An extensive exploration of the criminal vs. civil dichotomy was undertaken in Barona Group of Capitan Grande Band of Mission Indians v. Duffy, 694 F.2d 1185 (9th Cir., 1982), which involved a tribal bingo scheme which utilized the services of a non-Indian management corporation in conducting bingo operations. In finding state gambling laws to be civil and regulatory, the Ninth Circuit Court of Appeals relied upon four factors: 1) there was no general prohibition in California law against bingo operations and in fact they were expressly authorized for tax exempt organizations; 2) the general public was allowed to play bingo at an authorized game which cut against a public policy prohibition; 3) the principle that ambiguities in statutes concerning dependent tribes are to be resolved in favor of the Indians, especially when enforcement of the county bingo law would be contrary to the federal policy of encouraging self-government; and 4) the purpose of the tribal bingo ordinance was to collect money for the health, education, and welfare of the tribe, an intent which was just as worthy as the other charitable purposes recognized by law.

There are at least two cases which hold to the opposite, finding state gambling laws to be criminal and prohibitory and that states may thereupon enforce their regulations on the reservation. United States v. Farris, 624 F.2d 890 (9th Cir., 1980), cert. den. 449 US 1111 (1981); United States v. Lummi Indian Tribe, Civil Action No. C-83-94-C (W.D. Wash., 1983). It should be noted that these cases are both from the State of Washington, which is a P.L. 280 state, involved criminal prosecutions, as opposed to being actions for Declaratory Judgment, as were the above three cases, and further that these two cases involve grossly abusive gaming practices whereby individuals, as opposed to tribal members through their government, benefitted.

1. 18 U.S.C. Section 13 - The Assimilative Crimes Act

States may directly enforce neither its criminal law nor its civil regulatory authority on the reservations. However, state law and policy can become a standard for Indian conduct.

The Assimilative Crimes Act provides:

> "§13. Laws of State Adopted For Areas Within Federal Jurisdiction. Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the

> State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

The Assimilative Crimes Act is, as far as Indians are concerned, a complement to the Federal Major Crimes Act, 18 U.S.C. Section 1153, which provides criminal sanctions for 13 enumerated offenses when committed in Indian Country. The Assimilative Crimes Act provides that acts which are not defined and made punishable under federal law shall be prosecuted in federal court not as a direct violation of federal law itself but by "assimilation" of the relevant state law into federal law; if certain conduct is a crime by the laws of the state, then it is criminal under federal law also. Thus, a person who, while on a federal "enclave" such as an Indian reservation, commits an act which would be criminal under the law of the state in which the enclave or reservation is located may be prosectued in federal court as a matter of federal law. Unites States v. Big Crow, 523 F.2d 955 (8th Cir., 1975), cert. den., 424 US 920 (1976). By this circuitous legal route, a violation of state gambling law could be prosecuted in federal court, even though his acts occurred on an Indian reservation. However, there is a relevant exception to this general rule and it involves, again, the criminal/prohibitory vs. civil/regulatory dichotomy; if the state law which the individual is alleged to have broken is civil and regulatory in nature as opposed to criminal and prohibitory, then the state law cannot provide a basis for federal prosecution. United States v. Marcyes, 557 F.2d 1361 (9th Cir., 1977). Again, the entire criminal vs. civil analysis set forth in this

Memorandum, above, applies.

For purposes of criminal prosecution under the Assimilative Crimes Act, the Courts seem to more strictly construe state statutory and regulatory schemes as criminal and prohibitory; indeed, the Courts in this situation seem to be willing to consider state policy in addition to codified state law in the inquiry as to whether gambling activities are illegal. Two cases illustrate this principle. In _United States v. Farris_, supra, four Indians and five non-Indians were convicted of violations of 18 U.S.C. 1955 by running a gambling casing featuring blackjack, poker and dice, on the Puyallup Indian Reservation. The casinos were unlicensed, attracted many non-Indians, were very profitable, and were characterized as large-scale and professional gambling businesses. The Court found that although the casinos were outside the reach of Washington laws, the state had strong public policy against such large-scale operations, even though Washington law itself did not say as much. In _United States v. Lunmi Indian Tribe_, Civil Action Number C-83-94-C (W.D.) the Federal District Court in Washington State found a similar blackjack operation to be so contrary to state public policy as to rise to the level of criminal conduct.

Since the gambling provision of the Organized Crime Control Act, 18 U.S.C. Section 1955, as discussed below, has been broadly construed to incorporate state law and policy to acts by Indians, there is little need for use of the Assimilative Crimes Act in reservation gambling prosecutions.

2. 18 U.S.C. Section 1955 - Organized Crime Control Act.

In a manner similar to what we have seen in the operation of the Assimilative Crimes Act, which makes it a federal crime to engage in an illegal gambling business, 18 U.S.C. Section 1955 also looks to state law to determine whether or not a particular form of gambling is illegal. This provision is a general federal criminal statute applicable throughout the United States, whether or not an Indian is involved; although Indian tribes enjoy a unique and special status and relationship with the U.S. government, they are not exempt from the coverage of Section 1955 because of that status. United States v. Farris, supra.

Section 1955 defines an "illegal gambling business" as:

"A gambling business which:
(1) is a violation of the law of a State or political subdivision in which it is conducted;
(2) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
(3) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000.00 in any single day."

To determine the legality of an Indian gambling operation under this statute, one must look again to state law and policy. Although the statute says the gambling operation must violate state law, the Courts have shown, as stated above, that they are willing to also consider whether state public policy was also violated.

The criminal vs. civil analysis is relevant here again in determining whether a Section 1955 violation has occurred. In Barona, discussed above, the Court found Section 1955 inapplicable because California state laws were merely regulatory and not prohibitory in nature and did not therefore support imposition of federal criminal sanctions.

One possible route around Section 1955 which should be noted is via Subsection (e). This subsection provides that organizations with non-profit status under Internal Revenue Code Section 501(c)(3) are exempt from Section 1955. It is also possible that this section would not apply if a single entity - the tribe - was the sole actor in conducting the activity covered by this section.

3. New Mexico Law.

In order to determine whether the Assimilative Crimes Act and 18 USC Section 1955 apply and affect pari-mutuel wagering on a tribally sanctioned greyhound race track, applicable laws of New Mexico must be looked at.

The State of New Mexico does not document legislative history which might reflect the policy behind its gambling and pari-mutuel wagering laws. However, pari-mutuel wagering is generally viewed differently from gambling. Most gambling statutes are directed at betting on games of chance such as cards, dice, slot machines, punch boards, etc. The anti-gambling provisions of Section 30-19-1, et seq NMSA 1978 have been so interpreted in State v. Las Cruces Elks Club 54 NM 137, 215 P. 2d 821 (1950). New Mexico courts have held that Section 60-1-10 NMSA 1978, legalizes pari-mutuel betting under fixed conditions, and declares that it shall not be construed as gambling. Patton v. Fortuna Corporation, 68 NM 40, 357 P. 2d 1090 (1960).

The fixed conditions that allow pari-mutuel betting is when the conduct takes place at a state sanctioned race track. Schnoor v. Griffin, 79 NM 86, 439 P. 2d 922 (1968). The Court in Schnoor expressly stated that it was the intention of the legislature to exempt pari-mutuel betting from the general provisions of the gambling laws when done by patrons who are physically present at the track. It seems clear that the general gambling laws were intended to cover betting on games of chance and do not cover pari-mutuel wagering.

As discussed earlier Courts look to the civil/regulatory v. criminal/prohibitory nature of state laws when determining whether certain conduct or activity taking place on an Indian reservation is controlled by state law through the Assimilative Crimes Act. Pari-mutuel wagering is legal conduct in the state of New Mexico if done at a state sanctioned track.

New Mexico does not absolutely prohibit pari-mutuel wagering. This conduct takes place at several race tracks throughout the state and at the state fair. In applying the test set forth earlier, it would seem difficult to arrive at the conclusion that New Mexico pari-mutuel wagering laws are prohibitory and would instead be reasonable to conclude that they are regulatory in nature. If so, the Assimilative Crimes Act would not apply nor would 18 USC Section 1955. Indian tribes in New Mexico should be able to allow pari-mutuel wagering at a track located on their land and sanctioned by the tribal government. The fact that the race being wagered upon is run by dogs and not by horses should be of no consequence.

CONCLUSION

While there is no case law directly on point it seems clear that a Court could conclude that pari-mutuel wagering at a tribally sanctioned race track is permissible. In this case, the tribe is the entity preparing to conduct the activity through its non-profit corporation for the purpose of raising revenue for the tribal treasury. The state of New Mexico raises revenue through liscensing horse race tracks and regulating pari-mutuel betting at those tracks. The State also benefits by allowing pari-mutuel wagering on horse racig at the State Fair.

This project fulfills the mandates of the Presidential Commission on Indian Reservation Economies in that private industry will provide the venture capital to fund this project. To find that tribal governments cannot raise revenue and create employment through the subject activity as the state of New Mexico does, would be contrary to the national goal of supporting tribes in their efforts to gain economic independence and to create a better standard of living for their people.

Haltom Memorandum

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Legal Memorandum

I

Introduction

The Pueblo of Santa Ana is an Indian Tribe recognized by the United States of America residing on a reservation north of metropolitan Albuquerque, New Mexico near the town of Bernalillo. The reservation includes lands on which members of the tribe have resided and over which the Tribe has exercised jurisdiction of all inhabitants since time immemorial. The Tribe was previously recognized by the government of Mexico and guaranteed its rights of existence by the United States under the Treaty of Guadalupe Hidalgo. The Tribe has a traditional form of government with religious and secular aspects. The Pueblo Council which consists of all male heads of household sets the policies for the secular government which policies are carried out by the Governor, Lt. Governor, Secretary and Treasurer. The Pueblo Council also sits as the Pueblo Court concerning matters involving members of the Pueblo. The reservation is crossed by two major highways, Interstate 25 and New Mexico State Highway 44. The reservation is dissected by the Rio Grande River and the confluence of the Rio Grande and the Jemez Rivers lies within the reservation boundaries.

The Pueblo of Santa Ana has by ordinance established a Santa Ana Racing Commission with full regulatory, licensing and enforcement authority over racing and pari-mutuel wagering on animal racing within the reservation boundaries. The ordinance authorizes pari-mutuel wagering on animal races and is practically identical to the New Mexico statute concerning pari-mutuel wagering on horse races. The Santa Ana Racing Commission, consisting of five members appointed by the Governor and confirmed by the Pueblo Council, allows only the Pueblo, an enterprise of the Pueblo or a corporation in which the majority of stock is owned by the Pueblo to apply for and receive an owner's license for a race track. In addition, the ordinance requires licensing by the Commission of any operators or managers of a race track or other personnel such as trainers and kennel owners. The Pueblo Council has established a non-profit enterprise of the Pueblo called Santa Ana Non-Profit Enterprise (SANE) to operate certain Pueblo enterprises assigned by the Pueblo Council and to ensure that all net profits of the enterprise are used exclusively for charitable, educational, religious and scientific purposes and that no part of the net profits shall inure to the benefit of any individual, whether Indian or non-Indian. SANE is operated by a Board of Directors of nine members.

The Pueblo Council has also enacted a liquor control ordinance authorizing the Pueblo, an enterprise of the Pueblo or a corporation, in which the majority stock is owned by the Pueblo, to apply for a permit from the Pueblo Council to sell liquor within the reservation boundaries. All of the ordinances referred to are subject to approval by the Secretary of the Interior or his authorized representative.

SANE has applied for an owner's racing permit for pari-mutuel wagering on greyhound racing from the Racing Commission which has been granted. SANE has entered into a Management Contract with Mr. Wayne Strong under which he will arrange the financing for a greyhound race track to be owned by SANE and operated by himself. Mr. Strong has applied for a manager's license from the Racing Commission which has been granted. SANE has also applied for a liquor permit to sell liquor by-the-drink at the proposed greyhound race track which has been granted by the Pueblo Council.

The regulatory scheme of the Pueblo to regulate animal racing and in particular greyhound racing at the SANE greyhound race track is as strict as the New Mexico scheme for regulating pari-mutuel wagering on horse racing within the State of New Mexico. The public policy of the Pueblo of Santa Ana is to allow pari-mutuel wagering on greyhound racing within the reservation boundaries under the same conditions as the State of New Mexico allows pari-mutuel wagering on horse races within the boundaries of the State of New Mexico. Those conditions, set forth in paragraph 10 of the Santa Ana Racing Ordinance, provide that pari-mutuel wagering shall take place only within the enclosure where any races are held and where the licensee has been licensed to use the pari-mutuel method or system of wagering on such races.

II

Scope of Opinion

The opinion contained herein relates to the following:

1. Legality of each of the three ordinances passed by the Pueblo Council of the Pueblo of Santa Ana; and

2. Pari-mutuel wagering by Indians and non-Indians at a tribally-licensed greyhound race track owned by a tribal non-profit enterprise is permissible in the State of New Mexico.

III

Summary of Legal Opinions

1. Santa Ana Non-Profit Enterprise Ordinance. The Pueblo of Santa Ana has the authority as a retained attribute of tribal sovereignty to establish tribal enterprises either for profit or non-profit by ordinance of the Pueblo Council. Although there are no BIA guidelines or regulations regarding the establishment of tribal enterprises, it is a common practice among Indian tribes. Tribal enterprises have been recognized by the federal courts as separate and legitimate entities. Such tribal enterprises, when given appropriate authority by the tribal council, can sue and be sued in their own name and their debts and obligations are considered separate from the debts and obligations of the tribe itself unless a guarantee or pledge of collateral is made by the tribal council. In such a case, the tribe would be liable for enterprise debts to the extent of such guarantee or pledge of collateral. Tribes, ". . . are free to form semigovernmental operations that act in the best interest of the sovereign." Navajo Tribe v. Bank of New Mexico, 556 F.Supp 1 (D.N.M. 1980).

2. Liquor Control Ordinance. The application of Indian liquor laws is treated in 18 U.S.C. §1161, which provides that certain federal criminal laws do not apply to any act or transaction within any area of Indian country provided such act or transaction is in conformity with both the laws of the State in which such act or transaction occurs and an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register. The liquor control ordinance limits the issuance of permits for sale of liquor to the Pueblo, an enterprise of the Pueblo or a corporation the majority stock of which is owned by the Pueblo. The ordinance imposes a five percent gross sales tax on sale of liquor which is to be used for the purpose of enhancing law enforcement on the reservation. The ordinance will allow the Pueblo to control more effectively the possession and distribution of alcoholic beverages within the reservation boundaries. In the opinion of our firm, the liquor control ordinance of the Santa Ana Pueblo is in conformity with the laws of the State of New Mexico and, once having been certified by the Secretary of the Interior and published in the Federal Register, will be a valid liquor control ordinance enforceable within the boundaries of the Santa Ana Indian Reservation.

3. Santa Ana Racing Ordinance. The Pueblo has authorized gambling on greyhound races only to the extent gambling is authorized by the State of New Mexico, i.e., pari-mutuel wagering within the enclosure where any race is held and where the licensee has been licensed to use the pari-mutuel method or system of wagering on such races. The public policy of New Mexico is to allow pari-mutuel wagering on animal races. In our opinion, the State regulation of horse racing does not limit the Pueblo in the types of animal races that can be authorized and conducted on the reservation. There is no New Mexico law prohibiting greyhound races. To allow the State regulations to limit the Pueblo's activities would constitute an infringement by the State on tribal self-government and on the federal commitment to tribal sovereignty and self-determination. State authority is precluded when it stands as an obstacle to the accomplishment of the full purposes and objectives of the Congress which in this case are tribal self-sufficiency and economic development. Finally, the tribal comprehensive regulatory scheme pre-empts application of state racing regulations unless there is a legitimate state interest to be protected. We have found none. In the opinion of our firm, the Santa Ana Racing Ordinance constitutes a valid exercise of the governmental authority of the Pueblo of Santa Ana to establish a racing commission and vest the commission with authority to issue permits, determine the location, type, time and other aspects of proposed race dates and to license owners, operators and other persons involved with racing on the reservation.

IV

Points and Authorities

Legal points and authorities are necessary only on the Santa Ana Racing Ordinance. Whether pari-mutuel wagering on greyhound racing on the Santa Ana Reservation under the tribal regulatory scheme is legal depends on: 1) whether New Mexico has jurisdiction over the activity and 2) whether it is a violation of state law to place a pari-mutuel bet on such greyhound racing. We conclude that the state has no regulatory authority nor is it a violation of state law to place a pari-mutuel bet on reservation greyhound races.

Point I

New Mexico Does Not Have Jurisdiction Over Greyhound Racing On the Reservation.

A. New Mexico Has No Legitimate State Interest to Protect.

State jurisdicton over Indian reservations, historically is strongly disfavored. *Bryan v. Itasca County*, 426 U.S. 373 (1976); *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973). For New Mexico to have regulatory jurisdiction it must show that it has a legitimate state interest such that state regulation is necessary to protect the general public. In the case of liquor sales by an Indian to non-Indian motorists on a state highway crossing an Indian reservation in California, the state had a legitimate interest in protecting the motoring public, mostly non-Indians, from drunken drivers. *Rice v. Rehner*, ___ U.S. ___, 103 S.Ct. 3291 (1983).

In the case of reservation greyhound racing, what interest does the State need to protect? Precluding pari-mutuel wagering on reservation greyhound racing is not rationally connected with protecting the New Mexico public when the public can bet at will on horse races at six racetracks off the reservation, two within forty miles of the proposed greyhound track. What different harm is the public exposed to from greyhound racing than from horse racing? Is gambling on greyhound racing less moral than gambling on horse racing? Unlike the liquor case, it does not appear that New Mexico has any legitimate interest to protect. The only conceivable interest to be protected is to insulate the existing horse race industry from competition; hardly an interest that can be characterized as a legitimate state interest to be protected. In fact, regulating to restrain competion would be contrary to the state policy encouraging free enterprise and discouraging monopolies. Therefore, since New Mexico has no legitimate interest to protect, the state law and regulations limiting pari-mutuel wagering to horse racing do not apply to the Pueblo of Santa Ana.

B. Application of the State Law Would Interfere With Tribal Self-Government; Self-Government Is Pre-empted By Tribal Law; and Would Conflict With the Federal Policy of Tribal Self-Sufficiency and Economic Development.

The Pueblo of Santa Ana has chosen to regulate greyhound racing on the reservation, through its racing commission. The Tribal Council adopted a comprehensive regulatory scheme for Indians and non-Indians. All aspects of racing and wagering are licensed, supervised and regulated. An Indian tribe has exclusive regulatory jurisdiction, limited only by Congress, over its members and over Indian land. This regulatory power consistent with the tribe's quasi-sovereign status has been held to include the power to regulate non-Indians. A tribe may regulate through taxation, licensing or other means the activities of non-members who enter consentual relations with the tribe or its members. *Morris v. Hitchcock*, 194 U.S. 384 (1904); *Buster v. Wright*, 135 F.947 (8th Cir. 1905). More recently, the Ninth Circuit confirmed such tribal court authority over non-Indians in *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587 (1983). The Court held that tribal regulations on automobile repossessions constituted a legitimate exercise of the tribe's inherent power. Civil jurisdiction to enforce the regulations was a necessary exercise of tribal self-government and territorial management even though the tribe had not adopted a constitution.

The Supreme Court has held that a tribe may impose a severance tax on oil and gas produced on tribal trust property even when the producer is non-Indian. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982). A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians even on non-trust lands. Fisher v. District Court, 424 U.S. 382 (1976). In a recent decision, the Ninth Circuit held that the tribal power to regulate carries with it the power to enforce regulations. Cardin v. De La Cruz, 671 F.2d 363 (9th Cir. 1982), cert. denied, 103 S.Ct. 293 (1984). The Ninth Circuit emphasized that to hold that Indian tribes cannot exercise civil jurisdiction over non-Indians would reduce to a nullity the Supreme Court's repeated assertion that Indian tribes retain attributes of sovereignty over their territory, not just their members. It is abundantly clear that regulation by the tribe includes taxation, control of development, licensing, environmental protection, regulation and lease conditions. Tribes throughout the country have routinely regulated such activities within the last decade. In Washington v. Confederated Tribes of the Colville Indian Reservation , 447 U.S. 134 (1980), the Supreme Court recognized that although tribes may have been divested of criminal jurisdiction over non-Indians by necessary implication, civil regulatory power has not been likewise divested.

The Supreme Court has pointed out a very important distinction:

> It must be remembered that tribal sovereignty is dependent on and subordinate to only the Federal Government, not the States. Washington v. Confederated Tribes of the Colville Indian Reservation, id at 154.

In Montana v. United States, 450 U.S. 544 (1981), the Supreme Court described the tribal power as follows:

> A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consentual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements . . . . 450 U.S. at 565.

A tribe also retains inherent power to exercise civil authority over the conduct of non-Indians on non-Indian lands within the reservation when the conduct threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the tribe. Therefore, the power of the tribe to regulate is based on sovereignty, drawn from both the power to tax and the power to exclude non-Indians, and is not derived from the consent of those being regulated. The type of civil regulations adopted by the Pueblo of Santa Ana over non-members have been authorized and approved in an unbroken line of Supreme Court and Circuit Court cases. Given the tribal decision to comprehensively regulate animal racing, application of the state law allowing only horse racing would infringe on the Pueblo's right of self-government. Such infringment is not permissible under federal law. See, Williams v. Lee, 358 U.S. 217 (1959).

Federal courts have precluded application of state laws to Indian tribes on the basis of federal pre-emption, as set forth in White Mountain Apache Tribe v.

Bracker, 448 U.S. 136 (1980), and pre-emption by virtue of tribal self-government, Crow Tribe of Indians v. State of Montana, 650 F.2d 1104 (9th Cir. 1981). In the Crow case the Ninth Circuit Court of Appeals stated that the self-government doctrine specifically prohibits state action that impairs the ability of an Indian tribe to exercise traditional governmental functions. The Court emphasized that no express congressional statement of pre-emptive intent is required; it is enough that state law conflicts with the purpose of federal policy. In finding that the Tribe could therefore challenge the state's imposition of severance taxes on coal production, as being an infringement on tribal self-government, the Court required a balancing of the importance of the state interest in asserting its authority against the impact on the tribe's ability to govern itself effectively.

Although there is no comprehensive federal scheme regulating animal racing or gambling on Indian reservations, the Pueblo of Santa Ana has adopted such a comprehensive tribal regulatory scheme. In fact, the tribal scheme is as stringent as the State's scheme and constitutes total regulation of animal racing and pari-mutuel wagering thereon.

Finally, Indian law is a reflection of national Indian policy. The recent policy, 1968 to the present, is one of encouraging tribal self-determination premised on the notion that Indian tribes are basic governmental units. During the 1970s and 1980s tribal governments have been affirmatively strengthened.

In April of 1974, Congress declared its policy as it relates to the development of Indian resources. The Indian Financing Act, 25 U.S.C. §§1451-1543 (1976) states:

> It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to the point where the Indians will fully exercise responsibility for the utilization and management for their own resources . . . "
> §1451

This policy is consistent with the Supreme Court's interpretation one year earlier of the Congressional policy and intent behind the enactment of the Indian Reorganization Act of 1934 in the case of Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973). The Court stated that Congress intended to "rehabilitate the Indian economic life and give them a chance to develop the initiative destroyed by a century of oppression and paternalism." In 1983 Congress passed the Indian Governmental Tax Status Act which specifies that for many purposes tribes are to be treated as state and local governments. Congress authorized issuance of tribal bonds for essential governmental purposes. Industrial development funded by tribal bonds cannot be achieved, however, since the Tax Status Act does not contain authority for tribes to issue industrial revenue bonds. The policy of the Reagan administration is to treat tribal governments as local governments having full regulatory authority over Indians and non-Indians within the reservation boundaries in exercise of the retained attributes of sovereignty that each tribe enjoys. Present policy strongly encourages economic development and tribal self-sufficiency. Applying the balancing test, the state interest is so weak and the tribal interest so strong that the state regulations must fail since they stand in the way of tribal achievement of goals set by Congress.

Enforcement of state regulatory schemes on Indian tribes with differing regulatory schemes but both engaging in the same gambling activity is contrary to present federal policy of encouraging tribal independence. Barona Group of the Capitan Grande Band v. Duffy, 694 F.2d 1185 at 1190 (9th Cir. 1982). State authority is precluded when it stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. If the New Mexico limitation of pari-mutuel wagering to horse racing is applied to the Pueblo of Santa Ana, it will stand as an obstacle to accomplishment of economic development by the Tribe. Therefore, state law does not apply.

Point II

It Would Not Be Unlawful to Place a Bet on a Greyhound Race at the SANE Racetrack.

A. State Regulation of Horse Racing Is Not Against State Public Policy and Is Civil/Regulatory and Not Criminal/Prohibitory.

New Mexico regulates horse racing on which pari-mutuel wagering is authorized. The New Mexico Gambling Act, §§30-19-1, et seq., N.M. Stat. Ann., generally prohibits all forms of gambling but specifically exempts ". . . (4) Betting otherwise permitted by law" from the definition of a bet. Otherwise permitted by law is pari-mutuel wagering on horse races, §60-1-10, N.M. Stat. Ann., and bingo games and raffles, §§60-2B-1, et seq., N.M. Stat. Ann.

New Mexico allows limited types of gambling and regulates that gambling activity by imposing certain fixed conditions. Also, since the State allows purses and prizes to be paid to the owners of animals in a contest of speed, strength or endurance, §30-10-1(A)(2), the public policy of New Mexico is to allow animal racing. Once a state allows a certain type of gambling activity, thereby setting the public policy, that activity may be carried on within the boundaries of an Indian reservation by an Indian tribe without regard to the state regulations. Such principles have been set forth in a recent line of federal cases.

In Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981), the Fifth Circuit Court of Appeals applied these principles to the Florida statutes regarding gambling exemptions for bingo and allowed high stakes bingo within the Seminole Indian Reservation. The Court refused to allow the state regulatory limitations to be applied to Indian tribes and stated conclusively that the state as a matter of public policy allowed bingo in a civil/regulatory statute recognizing that the Florida statute was not criminal/prohibitory. Likewise, the Federal District Court in Wisconsin found that the Wisconsin bingo statute was civil and regulatory so that the State could not enforce its bingo laws on the Oneida Indian Reservation. Oneida Tribe v. State of Wisconsin, 518 F.Supp. 712 (W.D.Wisc. 1981).

In United States v. Farris, 624 F.2d 890 (9th Cir. 1980); cert. denied 449 U.S. 1111 (1981); and United States v. Lummi Indian Tribe, Civil Action No. C-83-94C (W.D. Wash. 1983), the same analysis was made of the Washington gambling statutes and it was determined that the Washington law regarding casino gambling was against the public policy of Washington and was criminal/prohibitory. In Barona Group of Capitan Grande Band, etc v. Duffy, 694 F.2d 1185 (9th Cir. 1983), the Ninth Circuit Court of Appeals determined that the California laws regarding bingo were civil and regulatory and that therefore the Tribe could have high stakes bingo within the reservation boundaries without regard to state regulations or limits as to the size of bingo pots.

New Mexico law allows pari-mutuel wagering on races only under certain regulatory conditions. The regulated conditions are set forth in the New Mexico Pari-Mutuel Wagering Act, §60-1-10, N.M. Stat. Ann., which require that 1) the race must be a horse race; 2) wagering must take place within the enclosure where the races are to be held (no off-track betting); and 3) the race track must be licensed by the State Horse Racing Commission.

The fixed conditions were also specified in Schnoor v. Griffin, 79 N.M. 86 (1968), wherein the court held that the New Mexico legislature intended to except pari-mutuel wagering from the gambling prohibition if conducted under the specified, fixed conditions. §60-1-10, N.M. Stat. Ann., does not contain any criminal penalties; it simply sets forth the fixed conditions under which pari-mutuel wagering is allowed. Further, the statute does not attempt to regulate activities by an Indian tribe or on an Indian reservation. The Act is silent as to Indian tribes.

The gambling activity that is allowed as an exemption to the general gambling code is pari-mutuel wagering; the activity regulated is horse racing. In Ross v. State Racing Commission, 64 N.M. 478 (1958), the Supreme Court of New Mexico recognized the longstanding declared prohibition against gambling in the state and then recognized the permissive rules for both horse racing and gambling and the conditions which premised the activity. The stated prohibition to racing, with pari-mutuel wagering allowed, unless license therefor has first been obtained from the State Racing Commission, is a prohibition which is a matter of public policy. It is clear that the public policy of the State of New Mexico is to allow pari-mutuel betting. In fact, the policy is to expand pari-mutuel wagering since the racing commission has recently allowed two new race tracks and a spring session at the New Mexico State Fairgrounds. In Patton v. Fortuna Corporation, 68 N.M. 40 (1960), the New Mexico Supreme Court recognized that pari-mutuel wagering had been legalized under certain fixed conditions and that, therefore, pari-mutuel wagering shall not be construed as gambling.

The statutes of other states that allow only horse racing may be prohibitive in nature and therefore, the public policy analysis must be made for each state separately. It is clear that the policy of New Mexico is to regulate horse racing and pari-mutuel wagering in a civil manner.

To determine whether an activity is prohibited or regulated, the courts have applied a public policy test. If the legislature deemed the activity to be against public policy, it would have prohibited the activity and made it a criminal offense to engage in the activity. However, if the activity was allowed but regulated, it would not then be against public policy and would be a civil law, regulatory in nature. Barona, supra at 1189. The policy questions are whether the activity is allowed for the general public; whether the profits from the proposed activity are to be used for purposes generally allowed by the State; whether the statute contains prohibitory language; whether the statute contains criminal penalties; whether the statute is primarily a licensing law; whether the statute provides penalties for engaging in the activity or only for activities not in accordance with the statute. Applying the public policy questions to the New Mexico Horse Race Act it is clear that the Act:

1) Allows the general public to place pari-mutuel bets on horse races at will;

2) allows individuals to profit personally from horse races;

3) does not prohibit horse racing;

4) provides for civil penalties, such as revocation of licenses and fines;

5) does not contain criminal penalties;

6) is primarily a licensing law;

7) provides penalties only for activities not in accordance with the statute.

Therefore, the New Mexico horse race statute is civil/regulatory and is not a criminal statute prohibiting either horse racing or pari-mutuel wagering. Since such activities are not prohibited they are not against the state public policy.

B. Pari-Mutuel Wagering on Greyhound Racing on the Reservation Does Not Violate the Assimilative Crimes Act.

The Assimilative Crimes Act, 18 U.S.C. §13, is a law of general application and thus applicable to Indian Country. Williams v. United States, 327 U.S. 711, 66 S.Ct. 778, 90 L.Ed. 962 (1946). However, the Assimilative Crimes Act does not apply where a specific federal criminal statute is applicable. The effect of this federal law is to incorporate the criminal laws of the states into the laws of the United States so that violations will be prosecuted in the Federal Courts as federal offenses. It is made applicable to Indian Country by the General Crimes Act, 18 U.S.C. §1152, and applies even to victimless crimes. See, Ryder v. State, 98 N.M. 316 (1982). It has also been utilized to control or prohibit illegal gambling on Indian reservations regarding slot machines. United States v. Sosseur, 181 F.2d 873 (7th Cir. 1950). The Assimilative Crimes Act incorporates the general criminal laws of a state, but not the state civil/regulatory laws. United States v. Marcyes, 557 F.2d 1360 (9th Cir. 1977).

Since the gambling activity to be regulated by the Pueblo of Santa Ana, pari-mutuel wagering, is an activity which is not against state public policy, does not violate the state gambling law, and is regulated by the State in a civil/regulatory manner, the Assimilative Crimes Act would not apply.

C. Pari-Mutuel Wagering on Greyhound Racing on the Reservation Does Not Violate the Gambling Devices Act or the Organized Crime Control Act.

There are two general federal gambling statutes, the Gambling Devices Act, 15 U.S.C. §1175, and the Organized Crime Control Act, 18 U.S.C. §1955. Since greyhound racing is not included in the ordinary definition of a gambling device, the Gambling Devices Act does not apply. The Organized Crime Control Act, 18 U.S.C. §1955, is a specific federal gambling statute applicable to Indian reservations. Even the unique and special relationship between tribes and the federal government does not exempt tribes from the Act. See, United States v. Farris, supra. Nonetheless, the federal Act defines an illegal gambling business as a business which is a violation of the laws of the state or political subdivision in which it is conducted; which involves five or more persons; and which operates for over thirty days or has a daily gross revenue in excess of $2,000.

The Ninth Circuit in the Farris case, id. held that whether a tribal activity is a "violation of the law of the state" depends on whether it is contrary to the "public policy" of the state. Presumably, this would also include any political subdivisions also. Since the public policy of New Mexico is to allow pari-mutuel wagering and since the public policy of the Pueblo of Santa Ana, also a political subdivision, is to allow pari-mutuel wagering, the federal Act should not apply. There can be no violation of the Organized Crime Control Act so long as only such gambling as is allowed by the state is conducted on the Santa Ana Reservation.

The State of New Mexico also exempts bingo from the general prohibition against gambling. The state regulates bingo games, however, and specifies such fixed conditions as who can sponsor bingo, when games can be held and the size of the jackpots. Bingo is likewise allowed on some Indian reservations and regulated by the tribes. The tribes decide who can sponsor a bingo game, when games can be held and the size of the jackpots. The tribal regulations are not the same as the state regulations and in most cases tribes allow high stakes bingo only by tribal organizations and large jackpots, neither of which complies with state law. In recent cases, previously discussed, such gambling activities do not violate state law because the gambling activity is the same and because the state law is civil, regulating the activity.

The same holds true for pari-mutuel wagering. In fact, the New Mexico Supreme Court has specifically held that pari-mutuel wagering is not gambling and does not violate state law when conducted under fixed conditions. Patton v. Fortuna Corporation, supra. The fixed conditions constitute the regulatory aspects of pari-mutuel wagering. Therefore, the tribal fixed conditions for pari-mutuel wagering may be different from state fixed conditions just as the bingo fixed conditions are different. And, just as tribal bingo operations do not violate state law, neither would pari-mutuel wagering at a tribal greyhound race track. The Organized Crime Control Act, therefore, does not apply to greyhound racing on the the Santa Ana Reservation.

V

Conclusion

The Pueblo of Santa Ana Racing Ordinance is in accordance with the laws of the State of New Mexico and in the opinion of this firm pari-mutuel greyhound racing is legal when conducted under the fixed conditions set forth in the ordinance. The New Mexico regulatory conditions, restricting pari-mutuel wagering to horse races do not apply to the Tribe, for if so applied, they would infringe on the Tribe's right to self-government and would interfere with the federal policies of Indian self-determination, economic development and self-sufficiency. Further, the comprehensive regulatory scheme pre-empts application of state law except for determining the gambling activity to be allowed. The State has no legitimate interest that needs to be protected by applying the state horse race limitation to the Tribe. Therefore, pari-mutuel wagering on greyhound racing on the reservation is legal and would not constitute a violation of state law. Neither the Assimilative Crimes Act, the Gambling Devices Act, nor the Organized Crime Control Act applies. Applying the balancing test, the tribal interest in carrying out the federal policies for Indians far outweighs any concern of New Mexico to protect the horse race industry.

The Liquor Control Ordinance of the Pueblo, in our opinion, is in compliance with federal and state law; as is the Santa Ana Non-Profit Enterprise Ordinance. The economic development plans of the Pueblo depend on approval of the Ordinances which have been adopted. Since the Ordinances and activities authorized by the Ordinances are legal, the Secretary of the Interior or his authorized representative should issue his approval.

NORDHAUS, HALTOM, TAYLOR & TARADASH

B. Reid Haltom

Congressional Research Service
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Washington, D.C. 20540

May 21, 1985

TO : Honorable Pete V. Domenici
Attn: Joe Trujillo

FROM : American Law Division

SUBJECT : Effect of Keer-McGee v. Navajo Tribe, ________ U.S. ______, 105 S. Ct. ______, 53 U.S.L.W. 4451 (April 16, 1985), (1985).

Attached in response to your request is a report on the subject of how the Keer-McGee v. Navajo Tribe, U.S. ________, 105 S. Ct. _____, U.S.L.W. 4451 (April 16, 1985), decision rendered by the Supreme Court on April 16, 1985, will affect the relationship between the Secretary of the Interior and the Indian tribes.

We hope this information is helpful to you and that you will call upon our office should you need further assistance.

M. Maureen Murphy
M. Maureen Murphy
Legislative Attorney

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

THE IMPLICATIONS OF KERR-MCGEE CORP. v. NAVAJO TRIBE, ______ U.S. _______, 105 S. Ct. ______ (1985) 53 U.S.L.W. 4451 (April 16, 1985)

M. Maureen Murphy
Legislative Attorney
American Law Division
May 21, 1985

THE IMPLICATIONS OF KERR-MCGEE CORP v. NAVAJO TRIBE, _____ U.S. _____, 105 S. Ct. _____ (1985); 53 U.S.L.W. 4451 (April 16, 1985)

Introduction. On April 16, 1985, the United States Supreme Court ruled that the Secretary of Interior was not obliged to review or to approve a Navajo tribal tax ordinance in the absence of a specific statutory requirement or a tribal constitutional provision requiring Secretarial approval. Kerr-McGee v. Navajo Tribe, _____, 105 S. Ct. _____, 53 U.S.L.W. 4451 (April 16, 1985). This report will briefly discuss the facts of the case and the implications of the decision particularly with regard to the issue of whether it forcasts a change in the relationship between the over 400 federally recognized Indian tribes and the Department of the Interior.

The case. Kerr-McGee involved a challenge to tribal taxes by a non-Indian corporation leasing land from the Navajo Tribe to extract minerals. The corporation, Kerr-McGee Corp, was assessed tribal taxes on the value of its leasehold interest and on its receipts from the sale of the property produced or extracted within the boundaries of the Navajo reservation. The corporation contended that the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 461 et seq., and the Indian Mineral Leasing Act of 1938, 52 Stat. 347, 25 U.S.C. § 396a et seq., required Secretarial approval. Neither of these acts specifically mentions Secretarial approval, nor do any of the regulations promulgated under these acts address the question of Secretarial approval. The Court found that neither of these acts impliedly requires Secretarial approval of tribal tax ordinances. Since no other authority was found imposing a requirement of Secretarial approval, the Navajo Tribe is free to promulgate tax ordinances without submitting them to the Secretary of Interior for approval.

The impact of the case. It is difficult to predict what impact the case will have on the relationship between the tribes and the Department of the Interior. It does not change the law with regard to tribal authority to tax or Secretarial authority over tribal ordinances. At present many tribes have requirements in their own constitutions that make Secretarial approval a prerequisite of a valid tribal ordinance. The Department of the Interior is, however, in the interest of encouraging tribal self-suficiency, encouraging the removal of these clauses. If this dedepartmental policy changes, it is possible there is authority in the Secretary or in President to promulgate regulations requiring all tribal ordinances to be scrutinized by the Secretary of the Interior. This report will discuss each of these points in turn.

Tribal sovereignty. Indian tribes have been recognized by the Supreme Court of the United States since Chief Justice Joan Marshall's time to possess a degree of inherent sovereignty. The most recent decision of the court on the issue is Montana v. United States, 450 U.S. 544 (1981). In that case the Court set forth the principles used to decide whether a tribe has inherent authority to regulate (and tax) non-Indian interests within the reservation:

> . . . Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements . . . . A tribe may also retain

> inherent power to exercise civil authority over the conduct of non-Indian on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.
>
> Montana v. United States, 450 U.S. 544, 565-566 (citations omitted).

Tribal Taxing Authority. In 1980, the Supreme Court upheld the inherent authority of an Indian tribe to impose taxes:

> The power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implications of their dependent status.
>
> Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 135, 152 (1980).

In 1982, the Court upheld tribal authority to impose a severance tax on minerals withdrawn from tribal lands within the tribe's reservation. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982). That case involved a non-Indian extracting minerals under a leasing arrangement with a tribe. The Supreme Court viewed the taxing power as an attribute of tribal sovereignty and analyzed it in terms of whether or not the tribe had been divested of the power to tax minerals specifically by statute or implicitly by the nature of the tribe's status as dependent upon the overriding external sovereignty of the United States. Finding that no statute, including the various mineral leasing acts, served to impair the Jicarilla Apache Tribe's authority to impose mineral severance taxes, the Court looked to the question of whether the dependent status of tribes within the United States limited their taxing authority with regard to minerals severed from their land by non-Indians under contract to the tribes. It concluded that the tribe retained the taxing authority:

> . . . based on the views of each of the federal branches, general principles of taxation, and the conception of Indian tribes as domestic dependent nations, we conclude that the Tribe has the authority to impose a severance tax on the mining activities of petitioners as part of its power to govern and pay for the costs of self-government.
>
> Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 144.

The Supreme Court's opinion in the recent taxing cases recognized that the federal government for a long time has acceded to the authority of tribes to tax interests of non-Indians arising the non-Indians and Indians.[1/] In recent years tribes are increasingly asserting their taxing authority particularly with regard to non-Indians and primarily as a means of raising revenue and assuring economic viability. Congress, itself, seems to be encouraging this, having passed the Indian Tribal Tax Status Act of 1982, Pub. L. 97-473, 96 Stat. 2608, as amended, requiring that Indian tribal taxes be treated as state taxes for certain federal tax purposes. It is, thus, likely that the protests from non-Indians being subjected to new tribal taxes will increase.

[1/] An early case that the Supreme Court refers to as authority for this proposition is Buster v. Wright, 135 Fed. 947 (8th Cir. 1905), appeal dismissed 203 U.S. 599.

Tribal Constitutional Provisions Requiring Secretarial Approval for Taxing Ordinances. As the Supreme Court noted, in Kerr McGee, _______ U.S. _______, 105 S. Ct. _______, 53 U.S.L.W. 4451, 4452, many tribal constitutions, particularly those written during the early days of the Indian Reorganization Act (the IRA),[2] with the assistance of the Department of the Interior, require Secretarial approval of tax ordinances:

> Many tribal constitutions written under the IRA in the 1930's called for Secretarial approval of tax laws affecting non-Indians . . . . Thus the most that can be said about this period of constitution writing is that the Bureau of Indian Affairs, in assisting the drafting of tribal constitutions, had a policy of including provisions for Secretarial approval; but that policy was not mandated by Congress.

Seventy-seven[3] of the tribes originally eligible did not accept the Indian Reorganization Act's opportunity to adopt IRA constitutions. Moreover, some of the constitutions adopted under the IRA did not include provisions for Secretarial review and approval of tribal taxing ordinances.[4] Subsequently, some tribes have removed provisions requiring approval.[5]

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[2] The Indian Reorganization Act, Act of June 18, 1934, ch. 576, 48 Stat. 984, 25 U.S.C. § 451 *et seq.*, signified an attempt to end the policy of breaking up the tribes and their reservations, the Termination policy, and inauguated a policy of promoting independence and tribal self-government, but along lines more akin to Anglo-American constitutional government rather than traditional tribal forms of government. It allowed tribes to adopt constitutions and required Secretarial approval for those constitutions and for amendments to them.

[3] Brief for the United States as Amicus Curiae, at 14, *Kerr-McGee Corp. v. Navajo Tribe*, _______ U.S. _______, 53 U.S.L.W. 4451.

[4] *Id.*, n. 9.

[5] In *Kerr-McGee*, 53 U.S.L.W. 4451, 4452, the Supreme Court cities one of these tribes, the Mississippi Band of Choctaw Indians, and notes that the removal of the requirement for Secretarial approval was "with the backing of the Interior Department."

Today, any IRA tribe is in a position to remove the requirement for Secretarial approval. Since the IRA itself permits amendment to tribal constitutions, any constitution requiring Secretarial approval may be amended, with Secretarial approval. 25 U.S.C. 476. Finally, for the many tribes who, like the Navajo, are not subject to the IRA, the decision as to whether or not to submit tribal ordinances for Secretarial review rests with the tribe.

Current Department of Interior Policy with Regard to Reviewing Tribal Ordinances. The Department of the Interior is currently in the process of attempting to encourage more self-sufficiency on the part of the tribes. Speaking of the transition between the old policy of scrutinizing tribal ordinances and the new view, in its brief in Kerr-McGee, the United Sates said:

> Despite exceptions, the pattern just summarized may be taken to reveal a prevailing administrative view in the mid-1930's, and continuing for some time thereafter, to the effect that tribal taxation of non-Indians — like much else -- generally ought to be supervised by the Bureau of Indian Affairs. That, and no more, is what should be inferred from the practice of the Bureau of including a Secretarial review clause for any such taxing ordinance in most contemporary tribal constitutions, whether or not adopted under the I.R.A. This does not reflect any construction of recently enacted legislation. Whether or not it was appropriate, or prudent, to insist on federal screening of tribal actions that would affect non-Indians, the policy cannot be attributed to Congress and did not legally affect the prerogative of Indian Tribes other than those who, for the time being, 'contracted away' their autonomy in the matter of taxation. It may seem odd that, in this respect, most of the Tribes that accepted the I.R.A. are, at least nominally, less independent. But that is only because they

> were more directly under the control of the Indian Bureau when their constitutions were written. And, in any case, the strings are being cut.
>
> Brief for the United States as Amicus Curiae, at 15-16 Kerr-McGee Corp. v. Navajo Tribe, ______ U.S. ______, 105 S. Ct. ______, 53 U.S.L.W. 4451 (footnotes omitted).

According to the Department of Justice:

> Indeed, without any change in statutory law, the Department of the Interior, in recent years, has counseled against provisions requiring submission of taxing ordinances to the Secretary for review. And several tribal constitutions have now been amended with Interior Department concurrence so as to remove the requirement of submitting such ordinances to Secretarial approval.
>
> Brief for the United States as Amicus Curiae, at 16-17 Kerr-McGee Corp. v. Navajo Tribe, ______, U.S. ______, 105 S. Ct. ______, 53 U.S.L.W. 4451 (footnotes omitted).

This departure from earlier practice in the Bureau of Indian Affairs is not, according to the Department of Justice, a change in policy, but rather an acknowledgement of the success of the policy behind the IRA, "the effort, initiated in 1934, to promote responsible tribal self-government, so that today, Indian Tribes are fully capable of tailoring their taxation program to meet tribal needs without driving away important taxpayers." Brief for the United States as Amicus Curiae, at 17, Keer-McGee Corp. v. Navajo Tribe ______ U.S. ______, 105 S. Ct. ______, 52 U.S.L.W. 4451.

Requiring Secretarial Approval for Tribal Taxing Ordinances. Because of its power over Indians through the Indian commerce clause, U.S. Const., Art. 1, sec. 8, cl. 3, and the Indian treaty power, U.S. Const., Art. 2, cl. 2, and because the Supreme Court [6/] has recognized its power over

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6/ The most recent case in which the possibility of a limitation of the "plenary" power of Congress over Indian affairs discussed is Delaware (continued)

Indian affairs as virtually unlimited, Congress is free to require by statute that the Secretary of Interior approve all tribal taxing ordinances. It would also be free to enact an Indian tribal taxing code and require tribes to adopt it.

In addition to this power in Congress, however, there also seems to be the possibility that various statutes have delegated sufficient authority to executive branch official to permit them to require Secretarial screening of tribal ordinances. Some specific delegations of authority to the Secretary of the Interior to promulgate regulations concern an area that is the subject of a Congressional delegation of authority, e.g., contracts with Indian tribes, 25 U.S.C. § 81; rights-of-way through Indian lands, 25 U.S.C. §§ 311-328; mineral leasing of Indian lands, 25 U.S.C. §§ 396a-396d. It is possible that the Secretary could include in the regulations promulgated under such statutes the requirement that taxation of the interests being regulated be subject to Secretarial approval. It is also possible that general delegations of authority to the President, 25 U.S.C. § 9,[7/] and to the Secretary of the Interior, 25 U.S.C. § 2,[8/] may be

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(continued) Tribal Business Committee v. Weeks, 430 U.S. 73 (1977). In deciding whether the disposition by Congress of a judgment fund among various Delaware Indian tribes was permissible, the Court considered whether due process was being violated by the Congressional statute. The standard it announced for such cases was a very lenient one: whether Congress' action '"can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians.'" Delaware Tribal Business Committee v. Weeks 430 U.S. 73, 85, quoting Morton v. Mancari, 417 U.S. 535, 555.

[7/] Section 9 of title 25, U.S.C., provides that, "[t]he President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs.

[8/] Section 2 of title 25, U.S.C., provides: "[t]he Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations."

sufficient to authorize the promulgation of a general requirement of Secretarial review and appproval of all tribal taxing ordinances. It does not seem possible that such regulations will be promulgated given the commitment of the Reagan Administration to economic self-sufficiency for Indian tribes.[9]

Conclusion. In Kerr-McGee the Supreme Court upheld the power of an Indian tribe to tax without the approval of the Secretary of the Interior non-Indian interests in a leasehold of Indian property within a reservation and in property extracted from Indian lands within the reservation as long as no federal statute, federal regulation, or tribal constitutional provision does require Secretarial approval.

This represents no change in the law but as Indian tribes become more aggressive in asserting their taxing authority and as the Department of the Interior gives wider publicity to its policy of encouraging the removal of tribal constitutional provisions requiring Secretarial approval of tribal taxation ordinances, it is possible that persons subject to these taxes, particularly non-Indians and nonmembers of the tribe promulgating the tax ordinances, will protest. Should a need to curtail tribal power or to require Secretarial review emerge, Congress may do so by statute or may encourage the executive branch to test whether its wide delegations of authority in Indian affairs are sufficient to promulgate regulations requiring Secretarial review.

M. Maureen Murphy
Legislative Attorney
American Law Division
May 21, 1985

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[9] See President's Statement on Indian Policy. 19 Weekly Compliation of Presidential Documents 98 (January 24, 1983).

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE CABAZON BAND OF MISSION INDIANS, Plaintiff, v. THE COUNTY OF RIVERSIDE, CALIFORNIA, and BEN CLARK, Defendants, THE STATE OF CALIFORNIA, Defendant-Intervenor.	CASE NO. CV-83-1117-LEW(Tx)
MORONGO BAND OF MISSION INDIANS, Plaintiff, v. THE COUNTY OF RIVERSIDE, et al., Defendants, THE STATE OF CALIFORNIA, Defendant-Intervenor.	CASE NO. CV-83-3073 (LEW) DECLARATION OF THEODORE KRENZKE, DIRECTOR OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR, IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

EXHIBIT B

I, THEODORE KRENZKE, do hereby declare:

1. I am Director of Indian Services, in the Bureau of Indian Affairs, United States Department of the Interior. As such, I am familiar with the policies of the Department of the Interior regarding Indian tribal bingo enterprises.

2. It is the Department's position that tribal bingo enterprises are an appropriate means by which tribes can further their economic self-sufficiency, the economic development of their reservations, and tribal self-determination. All of these are federal goals for tribes. Furthermore, it is the Department's position that the development of tribal bingo enterprises is consistent with and in furtherance of President Reagan's Indian Policy Statement of January 24, 1983. A copy of the President's statement is attached hereto as Exhibit 1.

3. We regard the opportunity to establish bingo enterprises as particularly important for tribes which lack revenue-producing natural resources on their reservations and which lack a viable tax base. We recognize that the limitations on federal funding for tribal governments has been the impetus for many tribes to seek alternative sources of the revenue they need in order to provide governmental services to their people. A number of tribes have turned to bingo enterprises to supply that revenue just as many states have instituted state-run lotteries for the same purposes.

4. As the Department charged with the primary responsibility for carrying out the nation's trust obligations toward Indian tribes, we are responsible for protecting tribal resources. We are also concerned with the overall welfare of the tribes and their members. In furtherance of the federal responsibility in this regard, the Deputy Assistant Secretary--Indian Affairs (Operations) has recently issued instructions to the Area Directors of the Bureau of Indian Affairs regarding review and approval of bingo management contracts. A copy of these instructions is attached hereto as Exhibit 2.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.

Executed at Washington, D.C., on August 25, 1984.

Theodore Krenzke
THEODORE KRENZKE

Senator ANDREWS. I appreciate, of course, the presentation of our distinguished colleague.

Your presentation, Senator, leads to a couple of fairly obvious questions. You make the point that the door is swinging wide open, and we all know that if we do not do something, we will continue to have the vacuum, as you pointed out, that exists at the present time.

As I understand it, we have two options. The first is that we regulate it on a Federal basis to make sure organized crime stays out, to make sure it's proper, and all of these other things. The second choice is that we regulate it by saying that the tribes shall be subject to State law in this matter in anything and everything that's going on on the reservation operated by Indian people on Indian land. Now, as I understand it, those are our two broad choices.

Which choice, Senator, because of your experience, do you prefer between the two and could you shed some light on that?

Senator DOMENICI. Well, first of all, let me say the one thing that does concern me about delegating all of it to the States and that it would be subject to the State in every respect, one thing that does disturb me is the potential for discrimination. Clearly, I would not want to see the complete delegation to the States without some very, very strong language that would be enforceable that would indicate that Indian people and Indian entities, Indian land, would not be discriminated against in their efforts to seek the same kind of permission, and to the extent that it is permitted to other entities and citizens in the State.

Senator ANDREWS. That's true, but in doing that, Senator, would you suggest that if they follow State law, then on the reservation the Indian people on Indian-owned land would be subject to the State authorities—the State highway patrols, the State gaming officers, police power, shall we say?

Senator DOMENICI. Yes. Let me say that was my first observation in an effort to tell you which of the two I would choose. That part concerns me, if I choose it to say I favor—and it's very complicated, and I don't know that I've totally made up my mind. I'm willing to listen, but it seems to me that if we go the route of nationalizing the regulatory scheme and exempting the Indian people from the gaming and gambling laws of the States, then are we literally going to have a set of national statutes regarding all kinds of gambling? How about full-blown gambling, a casino?

Are we going to then say we are going to become the regulator of that or are we going to prohibit it unless permitted in the State? I don't think it's all clear. You could draw a mixture statute. You could draw one that permits bingo and permits something else, but doesn't permit full-blown gambling as you wanted to define it unless it was permitted by the States.

It is a very difficult issue, and if I had to choose right now, because of my tremendous concern, I would choose to exempt some of the activities that are going on now like bingo, and then I would delegate the rest and perhaps discuss a few others. I would delegate the rest to the States subject to a very, very strong antidiscriminatory provision.

Senator ANDREWS. Of course, the difficulty inherent in that procedure is that we're moving into an area, I'm sure the Senator realizes, that we have not gone for over 100 years or more; in effect, telling the State—the individual tribal councils that, "On your reservations, with your people, on your land, State law and State regulation shall prevail."

If in the case of gambling, then, it follows as the night follows the day that it would also be in the case of traffic violations, in plumbing and other regulations. Where do we stop if we begin to move in that direction—assuming that we go with the caveat the Senator has pointed out, that they cannot be discriminated against and they be treated on an equal basis with other citizens of the State.

Senator **Domenici**. Well, Senator, Mr. Chairman, and members of the committee, I regret to say that I don't think any general rule of law can be expected to apply for all of history in all circumstances. So I would choose to say that gambling in its broadest sense is an area that we might very well have to say precisely what you have just said. If it's the first time, we would be saying it is also the first time we have had this kind of problem in the gaming-gambling area. That does not mean that you have to apply it to paved streets; it doesn't mean you have to apply it to which building codes are applicable. You can proceed on those as we have.

But this one—let me put it to you another way—are we really going to have 15 gambling casinos around the country on Indian land because they are part of these United States, but we choose on the issue of sovereignty to say nothing about it? I don't think so. I'm not sure the Indian people are asking that yet, but I guarantee you, as the night follows day, if you can have dog racing in New Mexico and we do nothing about it and consider that's a sovereign right, I cannot believe that the next issue is not the next kind of gambling. Why wouldn't it be?

I see nothing in the law that is going to treat one different than the other. There may be in some States a difference in the degree of criminality, but I don't really see it as an objective difference.

Senator **Andrews**. Thank you very much, Senator.

Senator Gorton?

Senator **Gorton**. Mr. Chairman, with due respect, it is patently erroneous to state that to pass a law delegating these powers to the State would be the first such statute on any subject in 100 years. Your very staff memo here discusses the impact of Public Law 280, which is far less than 100 years old and which delegated all kinds of powers on Indian reservations to States.

The argument isn't whether or not this is a precedent or whether or not it leads to something else. The argument is, how public policy is best served. I would have to say that I think that there are more than two alternatives, Mr. Chairman. One alternative which many of the witnesses here today are going to ask is that we do nothing, and that we leave the law precisely as it is. A second is, of course, that we delegate express authority to the Department of the Interior to regulate gambling activities on Indian reservations.

Looking at the record of the Department of the Interior in this respect, I share the serious reservations of Senator Domenici. The Department of the Interior is going to care very little about State rules, State laws, State customs, and the like. The Senator's statement that laws relating to gambling have been at the heart of the setting of social policies in the State obviously states the case extremely accurately.

Then other alternatives have to do with if we are to give these powers to the Department of the Interior to eliminate their exercise of those powers by saying, as the Senator has suggested, that perhaps they have plenary authority to regulate bingo but do not have authority to authorize activities in States which those States don't authorize themselves, as the Senator has described the case to be in New Mexico.

Others would be to delegate authority to the States, as the Senator has said, with or without antidiscrimination provisions. I think discrimination would be a violation of the law without any such standards included in those statutes, but it would be highly appropriate for any such delegation to include such prohibition.

I may say, Mr. Chairman, that those who feel that, for some reason or another, States should not be able to set nondiscriminatory statewide rules with respect to gambling activities, which is one of the most fundamental aspects of the way in this society governs itself, while they may be able to prove their case, have a very, very heavy burden of proof for me. I find the position taken by the Senator from New Mexico to be both thoughtful and persuasive.

Senator **Andrews**. I appreciate the comments of the Senator. The point I was making is there are a number of areas in which States do not have the ability to regulate what goes on on the Indian reservation.

Senator **Gorton**. That's absolutely true. That's why we're here.

Senator **Andrews**. They're separate States.

Senator **Gorton**. Well, that's right.

Senator **Andrews**. That's right.

Senator **Gorton**. But to say that no such delegation has been made in 100 years is patently incorrect.

Senator **Andrews**. Well, the basic—within the reservation for Indians on Indian-owned land, it hasn't—the statute the Senator pointed out was specific to some States, not including North Dakota or New Mexico, and these specific rifle-shot-type pieces of legislation have, indeed, been considered before, and we are considering now.

Not having the benefit of being an attorney myself, sometimes I move in a direction that isn't specifically legal in case and get called up by my colleagues. But the point that concerns me is that--are we, indeed, and in fact saying that on a reservation you don't have the separate State status?

Now we may have one kind of gambling in Minnesota and another kind of gambling in North Dakota; indeed, in fact, a third type of gambling on the Fort Totten Indian Reservation in North Dakota, if indeed and in fact it's treated as a separate State.

The question in that issue, also, is the fact—and let's be frank about it—that unless there can be higher pot limits or something unique about the gambling on the Indian reservations versus the gambling in the rest of the State, people aren't going to come to gamble on the Indian reservation because there's no difference. Therein lies really what we're trying to take a look at right now.

The tribes have sensed that if they can take their State status and move it much as an adjoining member of the 50 States dc s, they can attract some business.

Senator GORTON. Perhaps we ought to make this apply to the Catholic churches as well. It would be great for their income.

Senator ANDREWS. Well, they do pretty well running bingo operations and all of this, but they are within the States' jurisdiction. But that's the reason for these hearings today.

Senator?

Senator DECONCINI. Mr. Chairman, let me submit an opening statement for the record and, without objection, it might appear at the beginning of the hearings.

Senator ANDREWS. Without objection.

Senator DECONCINI. I want to thank the Senator from New Mexico, first of all, Senator Domenici, for your leadership in Native American legislation and concern which you have expressed as long as I have been here, constantly working to find solutions rather than knee-jerk reactions. Your testimony here, though I didn't hear all of it, I've had a chance to look at some of it here, and I share your concern about the Interior Department.

I wonder if the Senator from New Mexico had any opportunity to assess the possible formation of a commission, either regional or national, which would be supported, as I see it, and paid for by the Indian tribes that participate in it, regulated by it, and obviously with strict scrutiny on the enforcement of it. I wonder if the Senator has any comments or alternatives to his concern about the Interior Department. I guess that's my real question.

Senator DOMENICI. Well, my concern about the Department of the Interior, I say to my good friend from Arizona, is not bureaucratic; it's not because it's a big bureau now and will be bigger. My concern is whether or not we want to set up a national commission under our auspices—that we would be the legislators who created it, not the sovereign States; our key decision is whether we want to set up a national regulatory scheme and/or commission for this country as it applies to Indian lands.

I really worry about that because——

Senator DECONCINI. Your concern is the further you get it away from the States' real involvement in the regulation, the greater concern you have, not so much the Bureau itself——

Senator DOMENICI. That's correct.

Senator DECONCINI [continuing]. Of exercising any control?

Senator DOMENICI. Senator DeConcini, in preparing for this last night I read some material and I looked at a document. I thought I still had it, but it's in my briefcase. What is the name of the gentleman that wrote it? Ted Krenski within the Bureau.

I find no fault with the statement, except I feel very bad to have to read it. It is an exhilarating statement about the tremendous economic opportunities that are going to our Indian people because of bingo. Now, frankly, I am discouraged. I didn't say a word here today that we ought to make it illegal or get rid of it. I just think that when Indian people have to come before us and brag, which is what that statement is doing, that we're really making some headway toward sovereignty and being able to pay for our needs because we're in the bingo business, you know, I'm saddened. We can't do any better than that in helping them in some partnership arrangement to have economic prosperity than to be just ecstatic about the fact that we're going to make some money on bingo? That's really at the heart of this whole issue here.

Senator DECONCINI. Well, but, Senator, wouldn't——

Senator DOMENICI. And it's all right. I didn't say there was anything wrong with it, but——

Senator DECONCINI. Wouldn't the Senator lay some of that to the economic conditions of the country? I agree with you, in my State some of the commitments made by this country that are supposed to be provided to the Native Americans haven't been there, and they haven't been there because we have not been willing to invest and fulfill those commitments—health, economic development, and what have you.

Senator DOMENICI. Well, Senator DeConcini——

Senator DECONCINI. Excuse me. Isn't bingo kind of a reaction to noneconomic development?

Senator DOMENICI. Sure. All I'm saying is that I dearly wish we had another paper up alongside of it saying what you've said and saying, if we can do better in these other areas—we really aren't overjoyed——

Senator DECONCINI. I agree with you.

Senator DOMENICI [continuing]. By saying somebody made $500,000 next door to Phoenix running the bingo parlor and, therefore, the Indian people are going to be all right economically.

Senator DECONCINI. I agree with you.

Senator DOMENICI. It is only in that context that I make the statement.

Senator DECONCINI. I thank the Senator and the chairman.

Senator ANDREWS. Thank you very much, Senator.

Senator Abdnor?

Senator ABDNOR. No questions.

Senator ANDREWS. Thank you very much.

Senator DOMENICI. Thank you, Senator.

Senator ANDREWS. Our next witnesses will be a panel. Panel 1 is made up of Curtis Osceola, the executive director of United South and Eastern Tribes, Nashville, TN; Mark Powless, the chairman of the National Indian Gaming Task Force from Oneida, WI; Joe Bowen, member of the National Indian Gaming Task Force, again from Oneida; and Josephine Jackson, the chairperson of the Michigan Indian Gaming Association, Mt. Pleasant, MI.

Gentlemen and lady, it is good to have you here.

Let me assure you that your entire statements will be in the record as though given in their entirety. We have a great number of witnesses, and you will leave a lot more time for questions and answers with the members of our committee if you summarize your statement, so that we can go on to the next panel.

Would you proceed? Go ahead.

STATEMENT OF MARK POWLESS, CHAIRMAN, NATIONAL INDIAN GAMING TASK FORCE, ONEIDA, WI

Mr. POWLESS. Thank you, Mr. Chairman and members of the committee for this opportunity to appear before you and address this issue in regard to our concern.

My name is Mark Powless. I am currently serving as the chairman of the National Task Force on Gaming on Indian Reservations. I am also an elected official of the Oneida Tribe of Indians of Wisconsin and have served in that capacity for the past 7 years.

Mr. Chairman, over the past 2 years, since the existence of this task force—it came into existence a couple of years ago in light of the concerns that the Justice Department had with regard to organized crime infiltrating Indian gaming on Indian reservations. At the time it created a lot of controversy in Indian country and, as a result of that controversy, this task force was created. It represents approximately 60-some tribes.

The concern that Justice had at the time was they were concerned about a pattern that had been recognized by the Justice Department in regard to organized crime, and that was their concern—that that pattern that they have recognized over the years, that the possibility of that pattern existing within Indian country on Indian reservations was a concern that they had. I might add, Mr. Chairman, that it is also a concern of the tribes themselves.

As I mentioned, the task force has been in existence for a little over 2 years. We have been researching and gathering information for the past 2 years. We have met from one end of the United States to the other on various Indian reservations, talking with tribal governments and tribal leaders about the concerns with regard to this issue of gaming on Indian reservations.

One of the problems that we have been having over the past few years, Mr. Chairman, is the issuance of a policy and some type of regulatory mechanism from the Department of the Interior and the Bureau of Indian Affairs itself. We have not been able to get a position or a policy statement from the Department of the Interior in regard to gaming itself. That has been a problem for us and, as a result, we're here today to testify to that effect in regard to legislation. Perhaps I guess we have recognized that there is a need for some type of protective legislation to be introduced into Congress that would protect the tribes' sovereign right to regulate activities on its reservations.

Mr. Chairman, also, there are instances which appear to be substantiating the concerns of the Justice Department that gaming is susceptible to criminal influence. However, there are many more tribes that are successfully operating games free from such outside influence.

We view that the recognized governments, recognized Indian governments, possess the legal authority of their constitutions to enact tribal law by resolution and ordinances which have been upheld in favor of the tribes by the Federal courts.

We have recognized that virtually all problems involved in Indian gaming can be traced to outside management firms or consultants that have contracts with tribes to run gaming operations around the country.

Mr. Chairman, I had an opportunity to testify before the House yesterday in regard to this issue. One of the things that disturbed me was the fact that various States that were represented and non-Indian organizations that were represented had talked about this so-called theory of unregulated gambling on Indian reservations. I don't feel that is the case. Gaming is regulated by tribes. Tribes can and do regulate on their reservations.

As an example, the Oneida Tribe has been in the bingo business for the past 10 years. We are 100 percent Indian-owned and operated by the tribe itself. We employ approximately 120-some people that have been taken off the welfare rolls, the unemployment lines, et cetera. We have been able to stimulate our own economy as well as the surrounding local governments' economy as well as our own. So we have had an impact economically in our State, in Wisconsin.

One of the things that disturbs me, Mr. Chairman, is the fact that I question the fact—whether or not States can regulate gaming within their jurisdictions. I had an opportunity about 3 or 4 weeks ago to appear before a national organization, Mr. Chairman, down in New Orleans that had a national meeting. This is the National Association of Gamulatory Regulatory Agencies. It is composed of States that have gaming within their own jurisdictions. It is made up of assistant attorneys general, attorneys general, U.S. attorneys, gambling regulatory commissions, boards, et cetera.

We had an opportunity to meet with this organization and to establish a contact with this organization and find out a lot of problems that the States themselves were having. One of the instances that was related happened—and I won't mention the State because maybe somebody might get mad—one of the instances that was related to us—one of the States has what they define as a charitable, nonprofit organization in bingo. They define that as a nonprofit, charitable organization.

One of the commissions did an investigation on this nonprofit bingo operation, and what they found out was that the nonprofit, charitable organization was composed of a father, a wife, a son, a daughter, and his children. They were the nonprofit organization themselves. So, as a result, when they investigated this organization, they left the State, and when they left the State, they also took one of the investigators with them who is now on their staff in another State.

The point is that there are problems in gaming no matter where it is, in Indian country or in the non-Indian world. There are problems with it, and we feel that the legislation that you have introduced gives us a means to help regulate these activities on reservations and gives us the means to protect our rights as tribal governments.

Mr. Chairman, we also heard from one of the attorneys general yesterday from California, a fellow by the name of Juan Corona. I had heard that he had made some statements in regard to tribes in the State of California; that there are no tribes that are making any money or are successful in California. I question the validity of his statements that he made in terms of that. There are tribes here today that are from California that are successful and that are making money and creating employment and creating jobs on the reservation and giving themselves an opportunity to help themselves.

I kind of felt bad myself a minute ago. The good Senator from New Mexico was just addressing you, and he was talking about he kind of felt bad that these Indians had this gaming. I guess I don't know how he would feel if that was taken away from the tribes. If the tribes were to become under State regulation, then we might as well close our doors; we might as well shut our doors; and we might as well go back to the 1950's era of Federal dependency.

The tribes view gaming as a means of economic development on the reservations that has been nonexistent for the past 200 years. The tribes also recognize the fact that gaming affords the tribe an opportunity to diversify itself into other businesses, into other operations, and to expand its economy on its reservation.

As an example, Mr. Chairman, on my reservation back home we have 33 different departments that we subsidize with our revenues. We have a bingo hall that seats 1,200 people. We also have other multimillion-dollar businesses on our reservation. Bingo is one of them. We have other businesses. We have been able to purchase land with our moneys from our various enterprises. We have been able to purchase a convenience store gas station. We just started groundwork and construction on a $10 million hotel project on our reservation that is going to employ 120 people. It's a first-class hotel that seats 200 people, and bingo has helped us to get our foot in the door in terms of economic stability on our reservation.

We've also had an opportunity to purchase stock in our bank, which we never had before. In the past we went to our bank and asked for loans in the surrounding area, and they told us—they more or less laughed at us, and they told us, "When you leave, you can leave through the back door."

Today the shoe is on the other foot, Mr. Chairman. I don't mean that in an antagonistic manner, but the fact is that we are now economically stable within our reservation, so that we have purchased stock in our bank. We are now the third largest stockholder in our bank.

I guess the point I am trying to make is that bingo and gaming on reservations afford the tribes an economic stability that has been nonexistent over the past 200 years. The introduction of your legislation, Mr. Chairman, the task force feels that we have no objections with the legislation that you are proposing be introduced, and we also feel that tribes' rights need to be protected.

[The prepared statements submitted by Mr. Powless follow:]

PREPARED STATEMENT OF THE NATIONAL TASK FORCE ON INDIAN GAMING BY MARK POWLESS, CHAIRMAN

BACKGROUND

Dear Senator DeConcini, Chairman and Members of The Committee, the National Indian Task Force was first created by the Bureau of Indian Affairs to address concerns of the United States Department of Justice regarding criminal elements infiltrating Indian gaming operations and the inability of the tribes to deal with such infiltration or regulate such operations. When the Task Force was first re-established as an Indian government Task Force in Minneapolis, Minnesota, in 1983, representatives of the Executive Assistant under Secretary of Indian Affairs John Fritz and Counsel for the Bureau of Indian Affairs were also present reinforcing the concerns raised by the Department of Justice. At various meetings it was suggested to the tribes represented by the Task Force that new federal legislation would best protect Indian governments.

Many Indian participants of the Task Force questioned the rationale upon which the concerns raised by the Department of Justice were based. The need for additional legislation was also questioned. And, finally, suggestions by some of the Indian participants, regarding the issuance of policy and regulatory mechanisms based upon existing federal Indian law, were dismissed or discouraged by the Bureau of Indian Affairs and staff of the Interior and Insular Affairs Committee.

During the last session of Congress, HR 4566 was introduced by Representative Udall and hearings were held on that bill. The Task Force appeared and testified on issues that are identical to Mr. Udall's new Bill, HR 1920. The Indian Gaming Control Act. The comments of the Task Force, now as then, are applicable to any federal legislation relating to Indian gaming operations.

The findings of the Task Force related to gaming in Indian Country have not changed in the last year. These are the findings of the Task Force:

1. While there are instances which appear to substantiate the concerns of the United States Department of Justice that Indian gaming is susceptible to criminal influence, there are many more Tribes that are successfully operating gaming enterprises on their Reservations free from such outside influences.

2. Recognized Indian governments possess the legal authority of their constitutions to enact Tribal law by resolution and ordinance. This governing authority permits Tribes to enact civil laws regulating activities on the Reservations, including gaming and has been upheld in favor of the Tribes by the Federal courts in every case in which that issue has been presented.

3. Virtually all problems in Indian gaming operations can be traced to situations in which the Tribe has contracted with an outside management firm or consultant. Tribes that manage their own operations are free of these kinds of problems.

4. The Department of Interior and the Bureau of Indian Affairs have not issued policies or guidelines, nor proposed new rules or regulations that could have assisted Tribes in the gaming operations. Thus, Interior and the Bureau of Indian Affairs, has been of very little assistance to Tribes in the development and management of their gaming operations.

The Task Force then made recommendations based upon the findings. These are:

1. Any federal legislation designed to address gaming in Indian Country should be based upon established principles of federal Indian Law.

(a) Recognized Tribes have a legal right to governmentally regulate civil activities in Indian Country.

(b) The United States has a duty to protect the rights of Tribes to self-government and self-determination.

(c) States may not interfere with nor infringe upon the governing rights of recognized Indian governments.

2. The Department of Interior should be legislatively directed to provide to Tribes interested in or already conducting gaming on their own reservations both technical assistance and financial consideration of gaming proposals on the basis of their economic merit. Interior's authority to provide contract and ordinance approval in Indian gaming matters should be specified.

3. Off-reservation gaming regulated by recognized Indian governments should be dealt with on the local and State level by means of agreements between the parties. Such agreements would provide protection as well as define their respective obligations.

PROPOSED PRESENT FEDERAL LEGISLATION

The Task Force has drafted its own legislation based upon its findings and recommendations. A copy is herewith enclosed. While it has not been introduced yet, it is expected that the provisions of the Task Force Bills should be considered in the existing bills.

H.R. 1920—INDIAN GAMING CONTROL ACT

The Task Force feel this proposal requires clarification of its Ordinance approval process and authority of Tribal licenses.

H.R. 2404—INDIAN COUNTRY GAMBLING REGULATION

The Task Force opposes this blatant unconstitutional abrogation legally recognized governing rights of Indian Tribes. This legislation would reintroduce the discredited termination policies of the 1950's.

S. 902—INDIAN GAMING CONTROL ACT

The Task Force is not opposed to this act on the provision requiring regional commissions. The Task Force will testify on this bill at the scheduled Senate hearings.

PENDING CASES

There is at least two pending cases in the federal courts. *California* v. *Cobazon*, is now an appeal to the 9th Circuit Court of Appeals. Another is *Lac Du Flambeau Tribe* v. *Wisconsin*, W.D. District Court of Wisconsin. Either of these, or others, could reach the United States Supreme Court. Under the present statutes, there is no guarantee that a decision would favor Tribes. For this reason, the Task Force feels it is imperative that federal protective legislation should be enacted.

FINAL RECOMMENDATIONS

The National Indian Gaming Task Force has recommended the following based upon its consideration of concerns raised by Tribes directly involved in the field of gaming. The recommendations are also based upon the need to protect all Indian governmental rights from ill considered legislation that would unnecessarily compound the relationship between the tribal and local or state governments.

1. Federal legislation should protect gaming in Indian Country from negative outside influences; these include:
   (a) Criminal elements, and,
   (b) Unscrupulous gaming consultants, developers and management firms.
2. Secretarial approval of contracts between tribes and professional gaming consultants or management groups.
3. Secretarial approval of ordinances or resolution that tribally regulate gaming in Indian Country.
4. The Department of Interior should provide technical assistance to Tribes, at the request, in developing, financing or managing gaming on their reservations.

PREPARED STATEMENT OF THE ONEIDA TRIBE OF INDIANS OF WISCONSIN, BY PURCELL POWLESS, CHAIRMAN OF THE ONEIDA BUSINESS COMMITTEE

Dear Chairman Udall and Members of the Committee, this is a summary of the testimony that the Oneida Tribe would like to present at hearings on the above entitled proposed legislation. In the last session of Congress, when hearings were held on similar legislation (HR 4566) the Oneida Tribe then set forth its concerns regarding the legislation that was then under consideration. Indian gaming has now become a controversial issue among Indian, federal and state governments. Several cases are now pending in the federal court system which could reach the United States Supreme Court. Many tribes, including the Oneida Tribe, worry that a bad case could have an irreversible and negative impact on its ability to generate these important governmental revenues.

The Oneida Tribe has actively participated in the National Indian Gaming Task Force over the past two years and endorses its findings and recommendations regarding gaming in Indian Country. However, the focus of the Oneida Tribe goes further in urging that more Indian tribal governments assert full tribal control over gaming on their reservations. This becomes a critical factor in view of the fact that Indian tribal governments, like all other governments in the United States, are considering, or are already using, some form of gaming to generate badly needed governmental revenues. Control and regulation of these gaming activities is much a concern of Indian tribal governments as any other government. The unique status of Indian governments suggests that any resolution of the issues be based upon the basic tenents of Federal Indian Law;

(1) Tribal governments are recognized by federal law and treaties which define their status in American law,

(2) The United States has trust and fiduciary responsibilities to protect the land, property and governmental rights, and

(3) States may not, in the absence of specific Congressional legislation, encroach nor infringe upon the legitimate governmental rights of Indian governments.

The Oneida Tribe has slowly and deliberately built a Bingo Enterprise on its reservation that has been successful for more than 10 years. The Oneida Tribe has been able to use its Bingo generated revenues to diversify its economic development and stabilize economic conditions on the reservation. In addition to the obvious financial support our Bingo provides to tribal programs, it employs more than 120 tribal members. Indirectly, the local Green Bay business community benefits from

Oneida Bingo patrons who stay, eat and spend money while playing Oneida Bingo. Thus, the Oneida Tribe has not only helped itself, it has also benefitted the local and state governments.

The two bills presently under consideration, as they are presently drafted would not be in the best interests of the Oneida Tribe. Specifically, the Oneida Tribe is of the opinion that, the provisions of HR 1920, Section 6 (c) as it is now written, would result in an unnecessary infringement of state interests upon decisions of tribal government's. HR 2404 is a direct grant to states of jurisdiction over Indian gaming on the reservation. HR 2404 is contrary to the decided cases of the United States Supreme Court, and to the responsibility the United States has toward Indian governments and people. Moreover, HR 2404, if its reasoning is examined, would open the door of final termination of Indian governments and wholesale erosion of legal rights.

For these reasons, it is the position of the Oneida Tribe that any federal legislation developed that would regulate gaming in Indian country should be directed at the most troublesome situations where tribes, as well as others have legitimate interests. In identifying these areas, the Oneida Tribe agrees with the National Indian Gaming Task Force that;

(1) Tribes should be protected from unscrupulous and unsavory groups and individuals who may have contacts with criminal elements; this can be accomplished by; providing for secretarial approval of contracts between Tribes and outside management groups or consultants specializing in the gaming profession. This would be the quickest and most effective means of protecting Tribes against criminal elements and influence. 25 USC § 81 provides this kind of protection for Tribes from their attorneys.

(2) Tribes should be supported by the United States Department of Interior in regulating, by ordinance or resolution, all activities, including gaming on their reservations. The proposed legislation provides for Secretarial approval of Tribal ordinances regulating gaming in Indian country. This should be drafted to be consistent with the Constitution of the Tribes. This could be accomplished by legislatively directing the Secretary of Interior to provide technical assistance and financial consideration of tribal economic development proposals, that include development and operation of Indian gaming enterprises at the request of the Tribes.

(3) The legislation should unequivocally recognize the legal rights of legitimate tribal governments to civilly regulate activities on their own reservations.

For the reasons and facts set forth above, it is the position of the Oneida Tribe that any federal legislation that would regulate gaming in Indian Country should:

(1) Protect tribal governments from unscrupulous outside professional gaming interests, and

(2) Assist the Tribes in developing and managing gaming enterprises by providing technical assistance and financial development support.

The Oneida Tribe will continue to be alert to the development of this and other similar legislation in order to voice our concerns and share our successful experiences as a fully tribally owned and managed Indian gaming operation.

Thank you.

Senator ANDREWS. Thank you very much.

Next we would like to hear from Curtis Osceola. Again, I would caution you that you don't leave us much time for questions, because we have a whole host of people coming behind.

Curtis?

Mr. OSCEOLA. Mr. Chairman, Lionel John, board of directors, will make the presentation.

Senator ANDREWS. Thank you.

STATEMENT OF LIONEL JOHN, BOARD OF DIRECTORS, UNITED SOUTH AND EASTERN TRIBES, NASHVILLE, TN, ACCOMPANIED BY CURTIS OSCEOLA, EXECUTIVE DIRECTOR

Mr. JOHN. Good morning, Mr. Chairman.

I'm Lionel John. I'm the treasurer of United South and Eastern Tribes, and I'm also treasurer of the Seneca Nation of Indians of New York State.

Of course, with me is Curtis Osceola, the executive director of USET, also a member of the Miccosukee Tribe of Florida.

I think, first, I want to comment that USET was the organization that put together the basis of S. 902 in that USET tribes got together about a year ago, after the hearings of last year didn't seem to produce any legislation, and we were worried that this situation was just going to be left out there hanging.

We got together and we got the tribal leadership together with ideas of how to approach the issue of regulating the bingo or gaming operations on the reservations. Our primary concern in coming to you with this piece of legislation was probably centered on a couple points. One of the points that we were worried about, which seems to frequently happen to Indian people, is that we were running a footrace. We were worried that perhaps in some part of the country a case might be brought before a court whereby a court in some area might rule on the status of Indian gaming, and often, as we know it, some of the cases that, for whatever reason, get selected on this are quite often the worse cases and don't fairly represent the issue or Indian people.

We were very worried that that might happen in this situation, and it seems like it has happened in some respects because I know some of the highlights that we've seen seem to point to the bad example, if you will. We don't think as a whole that Indian bingo or gaming is a bad thing, as our friend here pointed out. We know the benefits of Indian bingo to the reservations.

As he stated, as Mr. Powless stated here, it is the first time that Indian people have been able to really do things for themselves, and I urge that you support and bring the early enactment of this piece of legislation because I think that what we are presented is a means to regulate and it provides an option within what we are offering.

The options are: Of course, we favor to be able to regulate our own affairs, and we propose to do it on a regional basis, in the absence of anything else. I think we are willing to endeavor into a broader base of regulation, but at this time there is nothing out there. So we said to ourselves, "Well, let's try to get something established and try to help ourselves and protect ourselves at the same time."

The other part that we wanted to emphasize in this and the structure of this legislation is that there would be predominantly Indian control. There are instances, of course, where many tribes have not had the resources to begin their own operations and have had to find investors and partners in their operations, but this legislation defines it in such a manner that the Indians would always retain the utmost control of their own affairs. We feel that is a very important part of the proposed legislation.

One thing I think that I can point out, while we occasionally get some flack, if you will, from communities, from within States, people fail to realize that any time there is money generated within an Indian reservation, that money is generally spent in the whole community around the reservations, and it has a rippling effect. It not only benefits Indian communities, it benefits general communities. I don't think people often think of it that way. They just look at the Indians and try to say that we're doing something that isn't quite nice. But that certainly is not the case, and we want to emphasize that.

I think, with that, I'll conclude my remarks and thank you for this opportunity to be here today to testify.

Senator **Andrews**. Thank you very much.

Joe Bowen?

STATEMENT OF JOSEPH BOWEN, GENERAL COUNSEL, NATIONAL INDIAN GAMING TASK FORCE, PUYALLUP TRIBE, WASHINGTON STATE

Mr. **Bowen**. Thank you, Mr. Chairman.

Again, I will make my comments brief, too.

To introduce myself, my name is Joe Bowen, and I'm an attorney with the National Task Force on Indian Gaming. I'm from the Klallam Tribe in the State of Washington but I am here representing the Puyallup Indian Tribe. We will be up later on one of the panels and have our testimony that we will submit at that time.

Basically, I just wanted to make a couple of comments because I've had the unique experience of serving with the national task force the last couple of years in looking into some of the concerns around the country and observing the manner in which games are conducted around the country and the good that it has done. In fact, the task force produced a film which we'll get you a copy of. It's very good, and it talks about the different forms of bingo on different reservations. It is very informative.

I think that the record speaks for itself in Indian country. As a matter of fact, a few weeks ago—Mark was talking about our meeting that we had with the National Association of Gambling Regulatory Agencies. This is an association made up of all the different State gaming control boards and I believe also representatives of the different AGs' offices in the States.

In looking at our record, they themselves have been giving it a hard look. The question of Indian gaming had been raised in the last couple of meetings, and we were asked to come down and participate in a panel.

By the end of the week not only was a lot of information and dialog good for the industry exchanged, but we were invited to join the association on a parity with the States, and these are the gaming control boards themselves that are asking us, inviting us to join. A resolution which was offered by only one State to restrict us to State standards died for the lack of a second out of all the States represented. So I think that gives you some kind of indication from the folks with the technical expertise that are in the gaming area.

As with Mark, we are concerned about a lot of the rhetoric regarding unregulated gambling. Nothing could be further from the truth. What we see are comprehensive ordinances. We've seen tribes with their own ability and civil jurisdiction to run their games, regulate their games, and to address all the different concerns that, as a part of that industry, arise from time to time.

I think the tribes have an excellent record. As far as the States and all of their different problems, I have become convinced that the tribes in comparison have a very good record. I would be greatly concerned if I were running a game on a reservation whether I would want the State regulating or involved, with some of the history and problems they were addressing at their meeting, whether or not it could be done as efficiently as it has been done on the reservations.

In closing, I would just like to state that the Bureau of Indian Affairs has promulgated some regulations regarding the different management companies, noninterference clauses in the contracts with the tribes, proper background checks, and the different kinds of screening techniques, required contract limits and percentages, that I think were very good, very well done, and, as far as we can tell, have addressed all of the major concerns regarding management companies, and I think it is reflected in the legislation and I think should be given a little bit harder lock because they have worked well to date. That's all I'd like to say this morning.

Thank you.

Senator ANDREWS. Thank you very much.

Next we will hear from Josephine Jackson, the chairperson of the Michigan Indian Gaming Association.

Ms. Jackson?

STATEMENT OF JOSEPHINE JACKSON, CHAIRPERSON, MICHIGAN INDIAN GAMING ASSOCIATION, MT. PLEASANT, MI

Ms. JACKSON. My name is Josephine Jackson. I am here to represent the Michigan Indian Gaming Association, an association of five Michigan tribes that operate and license gaming operations on their individual reservations.

The Michigan Indian Gaming Association arose from the need for a united effort by the Michigan tribes to protect our valuable tribal enterprise, which is bingo. The association identified four general areas of concern for its activities: Assistance from tribes to other tribes in the operation of their bingo enterprises; development of legislative strategy relating to bingo and other gaming operations at the tribal level; exchange of information between tribes; and promotion of positive public relations for tribal gaming operations.

They have developed tribal ordinances, licensed all bingo operations, and carefully managed the revenue derived.

We have had an opportunity to review S. 902, sponsored by Senator DeConcini, relating to gaming in Indian country. While I personally don't believe that this bill is necessary for my tribe, because we already have restraints built in in tribal ordinance No. 7 for bingo, and we would develop ordinance for other tribes of gaming if we were to have them.

At this time all of our Michigan tribes own their own bingo games, and other forms of gaming may only be conducted by tribal members. Therefore, Michigan Indian tribes are already doing many of the things that are being considered by Mr. DeConcini's bill. Thus, this bill would only have minimal effect on our tribe.

I wish to place on record today that I do not advocate management contracts. In fact, I am very much against them by non-Indians, nontribal groups making a profit from the reservation when the tribes can do it themselves. However, I do realize that some tribes lack both resource and technical knowledge to begin gaming and that all tribes are sovereign and should have the right to proceed with their gaming as they see fit, as long as certain minimal standards can be applied.

In conclusion, the Michigan Indian Gaming Association believes that any effort by the Federal Government to control Indian gaming must protect Indian tribal enterprise and preserve it for the betterment of the tribes.

Thank you for allowing me to speak.

[The prepared statements submitted by Ms. Jackson follow. Testimony resumes on p. 98.]

PREPARED STATEMENT OF JOSEPHINE JACKSON, CHAIRMAN, MICHIGAN INDIAN GAMING ASSOCIATION, AND MANAGER OF THE SAGINAW CHIPPEWA FUND RAISING PROJECT, CONDUCT OF GAMING ACTIVITIES WITHIN INDIAN COUNTRY

I am here to represent the Michigan Indian Gaming Association, an Association of five Michigan Tribes that operate and license gaming operations on their individual reservations. The tribes that make up the membership are the Keweenaw Bay Indian Community, the Bay Mills Indian Community, the Hannahville Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians and the Saginaw Chippewa Indian Tribe.

The Michigan Indian Gaming Association arose from the need for a united effort by the Michigan Tribes to protect a valuable tribal enterprise, Bingo. The concept was discussed in December, 1983, at the Saginaw Chippewa Tribal Center and was followed up by an organizational meeting in January, 1984, in Sault Ste. Marie. Two regular association meetings have subsequently been held. The Association chose to formally organize and elect a chairman, vice-chairman and secretary at the organizational meeting. Participation is sponsored by the individual tribes who jointly share financial responsibility for the association's activities.

The Association identified four general areas of concern for its activities: 1. Assistance from tribes to other tribes in the operation of the tribal bingo enterprise; 2. Development of legislative strategy relating to bingo and other gaming operations at the tribal level; 3. Exchange of information between tribes; and 4. Promotion of positive public relations for tribal gaming operations.

The individual tribes believe that they have done an excellent job of self regulating the gambling operations. They have developed tribal ordinances, licensed all bingo operations and carefully managed the revenues derived. With the formation of this association the tribe's ability to self regulate will be enhanced. It is important to remember that the tribal self regulation was viewed as necessary by the tribes and there was not outside force making them conform to standards. If there is to be any gaming control it must acknowledge the Tribes abilities to self regulate and to allow the tribes true self determination in the gaming operations.

We have had the opportunity to review Senate Bill 902 sponsored by Senator DeConcini relating to Gaming in Indian Country. While I personally do not feel that this Bill is necessary for my Tribe, because we already have restraints build into Tribal Ordinance No. 7 for Bingo, and we would develop ordinances for other types of Gaming if were to have them. I do believe that some form of minimum restraint is required to govern outside management groups, that are contracting in various areas of Indian Country, to conduct gaming on reservations.

At this time all of our Michigan Tribes own their own Bingo Games and other forms of gaming may only be conducted by Tribal members. Therefore, Michigan Tribes are already doing many of the things that that are being considered by Mr. DeConcini's Bills. Thus this bill would have only minimal effect on our Tribes. And the effect that this bill would have would probably be in the positive nature. The fact that the bill would have minimal effect is because we already are:

1. Engaging in gaming activities.
2. We have developed standards to protect our games.
3. We have Tribal ordinances and/or are developing them to regulate gaming on the reservations.
4. Where licenses are necessary we have ordinances covering and regulating such licenses.
5. We have no management contracts, and do not recommend them to other Tribes in Michigan.
6. We have a CPA audit our books, and they are open to inspection.

Both the tribes and the tribal members in Michigan have benefited greatly from the bingo enterprises. Some of the benefits have been:

An ability to pay non-allowable tribal debts.

The maintenance of and utilities for tribal buildings.

The employment of many tribal employees in the operation of the bingo and other important tribal functions. (One tribe has 31 full time employees with wages and fringe benefits).

Tribal contributions to important health and human service programs operated by the tribe.

Financial support for other tribal business in the incubation period of the business.

The provisions of educational field trips for youths and adults.

The provisions for services for needy elderly tribal members.

The provisions of needed repair to faulty septic tanks.

The purchasing of wood stoves for needy tribal members.

Perhaps the greatest testimony to the value of the gaming enterprise to the tribes is the true self determination quality of the bingo enterprise. The Michigan Tribes have designed the structure of the operation, staffed it, in some cases built new facilities to house it, and determined how the income would be utilized by the tribe for the betterment of the tribe and tribal members. It was the tribes' responsibility to devise regulations and enforcement of them.

As a result of the extreme competence that the tribes have demonstrated in the bingo operations, positive relations have developed with the surrounding non-Indian communities. These communities realize the value of the enterprises in increased revenue of the local businesses. These positive relations will help bring about more positive relations in other areas.

Therefore, we would support this bill or any bill which has its purpose to allow Tribes to have greater control over their own property be establishing minimal federal standards which the Tribes would use to:

1. Establish or continue pre-existing games.
2. Ensure that undesirables elements are excluded from reservations.
3. Provide for adequate accounting methods.
4. Prohibit self dealing by Tribal officials.
5. Protect Tribal sovereignty.
6. Ensure management contracts are equitable and reasonable.
7. Allow for continuous growth of Tribal enterprises.
8. Enhance Tribal self-determination.

I wish to place on the record today that I do not advocate management contracts, in fact I am very much against any non-Indian, non-Tribal group making a profit from the reservation, when the Tribe can do it by itself. However, I realize that some Tribes lack, both resources and technical knowledge to begin gaming and that all Tribes are sovereign and should have a right to proceed with their gaming as they seem fit, as long as certain minimal standards can be applied.

In conclusion, the Michigan Indian Gaming Association believes that any efforts by the Federal Government to control Indian Gaming must protect the tribes enterprise and preserve it for the betterment of the tribes.

Thank you for allowing me this time to speak.

PREPARED STATEMENT OF JOSEPHINE JACKSON, MEMBER OF SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, MANAGER OF THE SAGINAW CHIPPEWA FUND RAISING PROJECT, AN ENTERPRISE OF THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

Mr. Chairman and distinguished members of the committee, my name is Josephine Jackson. I am a member of the Saginaw Chippewa Indian Tribe of Michigan. We are a small Tribe with Reservations in Isabella and Arenac Counties, Michigan. I am a member of our Tribal Council and I manage the Tribal Fund Raising Project, which handles Bingo. I have been asked to submit this written statement on behalf of our Tribal Council and for our Tribal Enterprise.

I have personally been involved in Tribal Gaming, since it began in 1981 on the Isabella Reservation. Therefore, I am fully aware of the impact that gaming, especially bingo has had on our Tribe's economic environment.

I can personally remember how tough life was on our reservation when I was growing up. I remember the difficulties that existed when my father-in-law was Chief in the 1950's and 60's. I also remember how my husband agonized over the Tribe's plight while he was Chief during the late 60's and early 70's. I also know that bingo and Indian gaming is not the answer to all our problems, but it is a step forward, in that it provides us with money and jobs created through private enterprise, as opposed to those traditional inconsistent government grants and contracts that have previously governed our survival on reservations.

Our Tribal Bingo is wholly Tribally owned and managed. All employees are members of the Tribe. The management and games are conducted in accordance with Tribal Ordinance No. 7, which has been approved by the Secretary of Interior or his representative (see attached copy).

We have asked to give testimony in favor of S. Bill 902, for two reasons; the first being to illustrate to you how important Bingo and other games are to the Tribes and secondly to inform the Senate that we support in spirit the need to provide minimum standards for the carrying on of gaming, in Indian Country.

We believe that any bill which would protect inexperienced Tribes from outside forces and bad contracts is met to assist Tribes and not hinder them. Such a bill as presented here would be helpful to any Tribe contemplating the establishment of some form of gaming as a revenue generating enterprise.

Since its very advent on April 25, 1981 at the Saginaw Chippewa Isabella Reservation, Bingo has been conducted as a business venture, with only Tribal members as employees and in management. We have built our Bingo one step at a time. Starting with a part-time staff and part-time use of the west wing of the Tribal Center. As we gradually learned the business, we expanded appropriately. At first we could handle only about 400 patrons with a small staff, later we expanded to handle approximately 650 with a full time staff. With our current renovation of the Tribal Center we should be able to service approximately 800 patrons. Since April 4, 1984 when our Bingo became a full time business, we have employed 32 Tribal members, many of whom were previously unemployed. In FY '84 our gross earnings was approximately $260,000.

The money generated from Tribal Bingo is used for sole benefit of the Tribe, some examples of its use being:

1. Payment for cost of Tribal Center.
2. Funding for Community activities.
3. Providing air conditioning for Nimkee Clinic.
4. Payment for new roof over Tribal Center gym.
5. The extension of Tribal Center parking lot.
6. A donation for life support system at Central Michigan Community Hospital.
7. Donations to Inter-Tribal Council of Michigan, Inc.
8. Donations to flowers for deceased Tribal members.
9. Donations of labor costs for Commodity Food Program.
10. Loans to other Tribal businesses.
11. Legal assistance and counseling for the Tribe.
12. The purchase of a telephone system for Tribal Center.
13. Paying the monthly cost of the Tribal Observer, which is the official Tribal Newsletter.
14. Payment for the upkeep of the Tribal campground and pool.
15. Sponsoring community softball and baseball teams.
16. Sponsoring Senior Citizen Christmas parties and picnics.
17. Providing funds for join effort by the Nimkee Clinic and Central Michigan University to work with children with visual problems.
18. Providing Christmas gifts to Tribal families.
19. Providing gifts for Indian Child Welfare Christmas raffles.
20. Sponsoring Tribal Bowling Teams.
21. Sponsoring Student Essay Contests.
22. Providing funds to Tribal 4-H activities.
23. Employing Tribal members, and providing them with income and health insurance.
24. Payment for expansion of Tribal Center.
25. Making down payment for land acquistion for Tribe.

We are fully aware that there are concerns have been exhibited over the type of individual who may be allowed to conduct gaming on Indian Reservations, because there is always a certain segment of society that will try to take advantage of people unfairly. But we are supporting the Legislation in Senate Bill 902 or the similar Bill before the House designated as H.R. 1920 as proposed by Mr. Udall, not because we are afraid of outside interference.

We are supporting these bills, because they would provide Tribes that are new in the gaming business with protection from outside elements who might attempt to utilize a Tribe's sovereignty for unfair or illegal purposes. Although I am personally opposed to management contracts, I am fully aware that some Tribes feel that they lack the expertise and capital resources to begin gaming enterprises on their own.

Therefore, management contracts may be necessary in some instances and I feel that the United States Congress should pass legislation that will support and protect all Indian Gaming.

We feel that Mr. Udall's Bill in the House and Mr. DeConcini's Bill in the Senate are the type of legislation that would be supportive of Indian Capital ventures such as gaming. Both Bills would enable the Tribes to adopt ordinances for licensing and regulation of gaming on reservations, this would allow orderly operation and control of the games by the Tribe. H.R. 1920 and S. Bill 902 would both allow for management contracts, provided they are approved by the Secretary of Interior, such contracts would presumably be scrutinized carefully by the Solicitor's Office before a decision would be for coming as to approval by the Department of Interior. The proposed legislation would also provide review and audit of records to assist in the enforcement of contracts and protect the Tribe involved.

We hope that there will be some compromise between Mr. DeConcini's Bill and that presented by Mr. Udall, because we believe that the Regional Indian Gaming Commission concept as developed in Mr. DeConcini's Bill has some merit. The Regional Commission as envisioned in Section 11 of S. 902 would provide the Tribes in each area with some control over how gaming is conducted. But what is more important is that it would allow Tribes to share information and assistance and promote strong relationships between gaming Tribes.

We do not want to return to those days before Bingo, and we are opposed to any legislation that would promote a policy in which our games would be regulated by State Law, because such a policy would be distructive of our games and we would be pushed back to pre-Bingo days. The legislation as proposed in H.R. 2404 would not be for Tribes in many states. This is because some states would seek to significantly reduce revenue generated through Indian gaming. This is because most states want to have a monopoly on that area, many states are generating funds by having control over such gaming so that only the state can license high stake games.

The only other significant comment that I have here today is that any management contract that is entered, should be for a maximum fee or percentage of far less than 49% as set out in Section 7(a) of the DeConcini Bill. I believe that management companies could turn a profit if the maximum percentage allowable was 30%.

In conclusion, I would like to point out that we hope that both Houses of Congress will adopt a bill that is favorable to Indian economies, one which will promote our growth.

Thank you for your time and consideration.

ORDINANCE No. 7

BINGO

Statement of purpose: An ordinance to regulate the operation, conduct and playing of games of Indian Bingo within the Saginaw Chippewa Reservations, and to produce revenue for support of programs which promote the health, education and welfare of the Saginaw Chippewa people.

Be it enacted by the Saginaw Chippewa Tribal Council as follows:

Section 1. *Short Title*—This ordinance may be cited as the Bingo Ordinance of the Saginaw Chippewa Indian Tribe of Michigan.

Section 2. *Interpretation*—This ordinance shall be deemed as exercise of the police power of the Saginaw Chippewa Indian Tribe for the protection of the public welfare, health, peace and morals of the Saginaw Chippewa Indian Tribe and all provisions of this ordinance shall be liberally construed for the accomplishment of this purpose.

Section 3. *Definitions*—In this ordinance, unless the context otherwise requires:

(a) "Bingo game" means the activity commonly known as "bingo" wherein participants pay a sum of money for the use of one or more cards. When the game commences, numbers are drawn by chance, one by one, and announced. The players cover or mark those numbers on the cards which they have purchased until a player receives a given order of numbers in sequence that has been pre-announced for that particular game. This player calls out "bingo" and is declared the winner of a predermined prize.

(b) "Bingo Commission" refers to a meeting of duly elected members of the Tribal Council acting as the Board of Directors of the Tribal Bingo.

(c) "Gross receipts" means receipts from the sale of shares, tickets or rights in any manner connected with participation in a game of bingo or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies and all other income from any source.

(d) "Indian Bingo" means a bingo game not governed by State limitations, because the game is conducted by Indians on a Federal Indian Reservation.

(e) "Nonprofit organization" means an organization not for profit, which is operated for charitable, religious, educational or public purposes within the Saginaw Chippewa Reservations and which has been so engaged for two years immediately prior to conducting or operating bingo game.

(f) "Occasion" means a gathering at which bingo games are played.

(g) "Person" means a natural person, firm, association, corporation or other legal entity.

(h) "Premises" means any room, hall, building, enclosure or outdoor area used for the purpose of playing a game of bingo.

(i) "Small bingo game" means a bingo game or games conducted or operated by a nonprofit organization in accordance with the provisions of section 5 and 7 of this ordinance and which does not exceed an aggregate of five hundred dollars in gross receipts per occasion.

(j) "Treasurer" means the Treasurer of the Saginaw Chippewa Indian Tribe.

(k) "Tribal bingo game" means a bingo game or games conducted or operated by the Saginaw Chippewa Indian Tribe in accordance with the provisions of sections 6 and 7 of this ordinance.

Section 4. *General*—

No person may hold, operate or conduct any game or games of Indian Bingo within the boundaries of the Saginaw Chippewa Reservation, except:

(a) A small bingo game conducted in accordance with the provisions of Section 5 and 7 of this ordinance; or

(b) A Tribal bingo game conducted or operated by the the Saginaw Chippewa Indian Tribe in accordance with the provisions of Section 6 and 7 of this ordinance.

Section 5. *Small Bingo Games*—A nonprofit organization may conduct or operate a small Indian bingo game within the exterior boundaries of the Saginaw Chippewa Reservations in accordance with the provisions of Section 7 of this ordinance, subject to the following restrictions:

(a) The nonprofit organization shall maintain such status and no member, director, officer, employee or agent of the nonprofit organization may receive any direct or indirect pecuniary benefit other than being able to participate in the game on a basis equal to all other participants.

(b) The nonprofit organization shall have been in existence continuously on the Saginaw Chippewa Reservations for a two year period immediately prior to conducting the game.

(c) No person except a bona fide local member of the sponsoring organization may participate directly or indirectly in the conduct or operation of the game.

(d) The gross receipts from the game shall not exceed five hundred dollars in the aggregate on any occasion.

Section 6. *Tribal Bingo Games*—

(a) Upon request of the Tribal Council, the Saginaw Chippewa Tribe may hold, operate and conduct tribal bingo games provided it can find a suitable site for a bingo operation and that the conduct of such games will not reduce, endanger, interfere with or harm tribal revenues or land use.

(b) The Bingo Commission shall supervise the administration of this section, and may adopt, amend and repeal rules and regulations governing the holding, operating and conducting of tribal bingo games which shall be in accordance with, and shall not violate the provisions of this ordinance; provide for the rental or purchase of premises and equipment required for the operation of tribal bingo games; and provide that tribal bingo games shall be held, operated and conducted in conformity with the provisions of this ordinance. Members of the Bingo Commission shall receive a stipend of $20.00 for attendance at any regular meeting and $5.00 for attendance at any special meeting of the Commission.

(c) The Bingo Commission shall, select a Manager for the tribal bingo operation, either pursuant to the employment policies of the Saginaw Chippewa Tribe or under management contract with the Saginaw Chippewa Tribe approved by the Tribal Council.

(d) The Manager shall have authority to establish, equip, operate and maintain a bingo operation and the Manager shall have the following powers and duties:

(1) To acquire, lease furnish, equip and maintain such premises as shall be required for the operation of this ordinance.

(2) To employ, direct, supervise, manage, control, promote, demote, discharge, fix the compensation and define the power and duties of such officers, clerks, card sell-

ers, callers, security guards and other employees as shall be required for the operation of this ordinance.

(3) To hold, operate and conduct tribal bingo games in accordance with the provisions of this ordinance.

(4) Without in any way limiting or being limited by the foregoing, to do all such things and perform all such acts as are deemed necessary or advisable for the purpose of carrying into effect the provisions of this ordinance.

(e) The Manager, and the employees responsible for the holding, operation and conduct of tribal bingo games in accordance with the provisions of this ordinance, shall be of good moral character and shall not have been convicted of any felony or misdemeanor involving moral turpitude, and, as a condition of and to their contract or employment, shall agree to any lawful means of testing, including but not limited to polygraph testing at any time and without prior notice concerning the handling, collection and/or disbursement of money.

(f) The Manager shall maintain a permanent record containing the name and address of each player who receives a prize if required by, and in accordance with the requirements of the Internal Revenue Code or any other enactments of Congress.

(g) All moneys collected or received from the sale of shares, tickets, or rights in any manner connected with participation in a tribal bingo game or the right to participate therein, including any admission charge, the sale of equipment or supplies and all other miscellaneous receipts from tribal bingo games shall be deposited in a special account of the Saginaw Chippewa Tribe which shall contain only such money. All operating expenses, except cash prizes, shall be withdrawn from such account by consecutively numbered checks duly signed by the Manager or an officer or officers designated by the Tribal Council and payable to a specific person or organization. No check shall be drawn to "cash" or a fictitious payee.

(h) The Manager shall maintain adequate written records of bingo activities on the premises for a period of at least four (4) years. These records shall include:

(1) Gross receipts;

(2) All payout for prizes, whether in cash or merchandise;

(3) Any and all operating expenses; and

(4) Net profits.

(i) The Bingo Commission, may on its own motion based on reasonable grounds on or complaint made, and after written notice giving the Manager thirty (30) days to cure a violation, seek such relief from the Saginaw Chippewa Community Court, in accordance with the provisions of Subsection (c) of Section 6 of this ordinance, against the Manager, or any officers or employees responsible for the holding, operation and conduct of tribal bingo games, as is necessary for the proper enforcement of this ordinance, of any rules and regulations made pursuant thereto, and of any management contract.

(j) All the net profits, after payment of operating costs derived from tribal bingo games shall be deposited into the general fund of the Saginaw Chippewa Tribe, and used to promote the government, health, education and welfare of members of the Saginaw Chippewa Tribe.

Section 7. *Operation of Games*—(a) The sponsoring organization of any nonprofit organization proposing to conduct or operate a small bingo game and the Manager of a tribal bingo game shall designate an officer or officers to be in charge and primarily responsible for the conduct of games of bingo on each occasion. The officer in charge shall supervise all activities on the occasion of which he is in charge and shall be present on the premises continuously during the game and for a period of at least thirty minutes after the last game.

(b) The premises where any game of bingo is being held, operated and conducted shall at all times be open to inspection by the Tribal Treasurer, and by officers of the Saginaw Chippewa Police.

(c) When any merchandise prize is awarded in a game of bingo, its value shall be its current retail price. No merchandise shall be redeemable or convertible into cash directly or indirectly.

(d) Equipment, prizes and supplies for games of bingo shall not be purchased or sold at prices in excess of the usual price thereof.

(e) Games of bingo may be conducted each and every day of the week and at any hour of the day or night, at the discretion of the sponsoring organization of any small bingo game or of the Manager of a tribal bingo game.

(f) Except as provided in Subsection 4 of Section 5 of this ordinance, there shall be no limit on the size of the prize offered or given in any single game of bingo or for any occasion.

(g) The equipment used in the playing of bingo and the method of play, shall be such that each card shall have a equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection. All objects or balls shall be present in the receptacle before each game is begun. All numbers announced shall be plainly and clearly audible or visible to all the players present. Where more than one room is used for any one game, the receptacle and the caller must be present in the room where the greatest number of players are present and all numbers announced shall be plainly audible or visible to the players in the room and also audible or visible to the players in the other room or rooms. The cards or sheets of the players shall be part of a deck, group or series of cards, no two of which shall not be so prepared or arranged as to prefer any card.

(h) The receptacle, the caller and the person removing the objects or balls from the receptacle must be visible to all the players at all times except where more than one room is used for any one game wherein the provisions of subsection (g) shall prevail.

(i) The particular arrangement of numbers required to be covered in order to win the game and the amount of the prize shall be clearly and audibly or visibly described and announced to the players immediately before each game is begun.

(j) Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the officer designated to be in charge of the occasion.

(k) No person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(l) All persons who hold, operate or conduct, or assist in holding or conducting a tribal bingo game shall be employees of the Saginaw Chippewa Indian Tribe and shall wear legible tags evidencing their names and the logo of the Saginaw Chippewa Indian Tribe. All persons who hold, operate or conduct or assist in holding or conducting a small bingo game shall be bona fide local members of the sponsoring organization.

(m) No person who holds, operates or conducts, or assists in holding, operating or conducting, a game of bingo may play at the game at which such person is working.

Section 8. *Violations; Jurisdiction*—(a) Any person who violates any provision of this ordinance, or any rule or regulation authorized thereunder, shall be guilty of a criminal offense punishable by a fine of not more than five hundred ($500.00), or by imprisonment for not more than six (6) months, or both, with each day in violation, being a separate charge.

(b) Any person who violates any provision of this ordinance, or any rule or regulation authorized thereunder, shall be liable for a civil penalty not to exceed five hundred dollars ($500.00), plus court costs, for each day in violation.

(c) The Saginaw Chippewa Community Court shall have jurisdiction over all violations of this ordinance. Nothing, however, in this ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indian except to the extent allowed by any applicable federal court decision.

Senator **ANDREWS**. Thank you very much.

Senator Gorton, do you have any questions of the panel?

Senator **GORTON**. I guess the question, Mr. Chairman, would be for any of the panelists. If they disagree, if there's any possibility they disagree, more than one can speak.

Is it your view in supporting this legislative proposal that Indian tribes should have the right to conduct any form of gambling activity on Indian reservations whether or not that form of gambling activity is prohibited by the State or, at the very least, that the Department of the Interior should have the right to authorize any form of gambling activity at all, or are you talking only about bingo and some other kind of restricted forms of gambling?

Mr. **JOHN**. Senator, I will give a remark on behalf of USET in respect to that question you raise.

We have in our material that we have in our statement and in the legislation language offered that the regulations which would presumably be established by this legislation would not, I guess, usurp the State authority. In the language that we have proposed, if there is State legislation governing bingo, that would be the way it was.

Senator GORTON. If the State prohibits dog racing, there would be no dog racing?

Mr. JOHN. That's basically the way the language was drafted by the tribal leadership in the organization.

Senator GORTON. Is there anyone who disagrees with that point of view? Mr. Bowen?

Mr. BOWEN. Well, I was just going to say that we accepted the language in the proposed bill which talks about the criminal public policy in the State.

Senator GORTON. You are making the kind of distinction in a sense the courts have already made? If the State allows a particular activity, you want to be able to be allowed to regulate it yourselves rather than have the State regulate it? If the State simply makes a kind of activity a criminal activity, then that prohibition would apply on reservations as well?

Mr. BOWEN. I can't speak, of course, for the other tribes but, from my own opinion, we basically feel that tribes should not be held to any standard. However, since the case law has evolved with the prohibitory versus regulatory scenario, we have been able to live with that and draw the line at being able to regulate our own games, however. We don't necessarily like it, don't think it's necessarily proper even the way that has evolved. However, we can live with it, and we're bringing money in for our social services and everything. I think that is what is reflected in your act.

Senator GORTON. OK. I get the parameters of your answer, but one more: In our own State, Mr. Bowen, obviously the State allows parimutuel horse racing. Would your proposal permit you to—or one of the tribes which you represent to—construct and operate a horse racing track totally free of State regulation, subject to such regulations as the Department of the Interior might impose or the tribe might impose?

Mr. BOWEN. I think that my firm belief is that tribes are very capable of running their own games, in light of the community and public policy and what is prohibited and not prohibited in working in that arena. However, I think Senator Gorton, to really respond in a practical manner, there is so much involved in studying one of those projects, the market is so easily saturated—States that allow it usually are already operating it. At a practical matter, in the marketplace, I don't think that that is going to be something that is going to be a real concern.

Senator GORTON. So the answer is that it would be permissible under your proposed legislation, but it would be unlikely to be utilized?

Mr. BOWEN. Yes.

Senator GORTON. Thank you, Mr. Chairman.

Senator ANDREWS. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, I'm just going to ask a followup question to that of the Senator from Washington of Mr. Bowen or Mr. John.

If, in fact, the marketplace is a determining factor, doesn't that put the native Americans, the Indian tribe, in a much better position competitionwise? Taking the example the Senator from Washington uses—let's say horse racing—and the way my legislation is drawn, I think your interpretation is correct; it permits you to regulate that or be subject to the Interior Department's approval, or they are to regulate it.

Then you could have a competitive edge over the non-Indian regulated State gambling; is that right?

Mr. BOWEN. I don't believe so. In parimutuel betting, I think—if you are talking about a competitive edge, in bingo you are talking maybe of restricted prize limits——

Senator DECONCINI. Right.

Mr. BOWEN [continuing]. But in parimutuel betting it's basically a product of how many people put into that pool.

Senator DECONCINI. Well, how about the days of regulation?

Mr. BOWEN. The days of regulation, that's possible. However, I think again we're focusing on the exception more than the rule. I basically think it is unrealistic in the sense that most of your games out there are bingo and bingo-related games.

I think tribes are very capable. From what I have seen, tribes are very capable of operating a parimutuel type of game and doing a good job at it.

Senator DECONCINI. I'm not disputing that perhaps they could do that. My problem that arises out of my own legislation is the competition advantage that the Indian tribe might have if they were free to regulate totally on their own; that they could have 300 days or 200 days of horse racing, parimutuel horse racing, where the State might only approve 90 days or something like that.

Senator GORTON. If the Senator would yield——

Senator DECONCINI. I would be glad to yield.

Senator GORTON. The other major factor in that is how much the takeout is.

Senator DECONCINI. That's right.

Senator GORTON. What share goes to the owners, what share back to the payers, and what share to—whatever the regulatory agency.

Mr. BOWEN. That's true. When you're drawing down the takeout, the percentage you would take out on parimutuel betting, that's a good point. However, again I would say that if you are drawing from a certain marketplace, it is going to be determinative. If people are used to a certain takeout, they are not going to want to play a game that has a larger takeout, which I think is what you might have been referring to, Senator, as an advantage there.

Senator DECONCINI. Yes.

Mr. BOWEN. Again, if you have parimutuel where the State runs it so many days and then so many days off, I think that when you compete in the market, it becomes saturated in the fact that the tribes don't themselves dictate to the States how many days they should or should not run; the State could open up and compete very easily with the tribe, I believe, on that parimutuel scenario.

Senator DECONCINI. But the reason you have regulations, whether it is on a Indian reservation or not, I hope is for the public interest, which would be the public interest of the Native Americans, of the Indians in the tribe; that it is not merely to make money. Just like in the States, I would hope that perimutuel is not there for the prime purpose of making money. Although we know that it does bring in revenue, the purpose is the public interest. The reason you would regulate it is to not have your reservation becoming just a gambling hall that would bring unsavory people there. Your purpose is to provide a public need. I would hope you would agree with that.

Mr. BOWEN. I agree with that. Some of the examples that we have found in our games around the country are very sensitive to the public interest and folks exercise of a lot of self-restraint in that area as it exists right now. There has, for example, only been one example in the State of Washington where folks have varied from the bingo, and that was short-lived. But my feeling of the law is that, if you've got these fundraising events that you have and it is not prohibited—it's regulatory—tribes could get into some of those areas. They just have chosen not to.

Senator DECONCINI. Thank you. I have no further questions.

Senator ANDREWS. Thank you very much.

Mr. JOHN. Sir?

Senator ANDREWS. Yes?

Mr. JOHN. I just have one comment in relation to the question or the issue the Senator raises. I think we have a different view of the issue as you bring it out. Our view is this: Isn't it about time that we had some legislation that enables Indian tribes and gives us some advantage? We've always been at a severe disadvantage at the marketplace.

Senator DECONCINI. Well, that's a very disputed situation, in my judgment, Mr. Chairman. You can make that argument, but that argument isn't going to fly, in my judgment. The voted aren't going to be here to give an advantage to anybody. What is going to be here, if anything, is what is fair. It isn't fair to give an advantage to somebody, whether it has been discriminatory against Native Americans—and in many cases it has been—that isn't fair and it isn't right. It doesn't mean that we offset that by giving a discriminatory or an unfair advantage or a greater advantage to the Indians in this country.

The purpose of this legislation is to try to find some stability that is fair. I hope the Native Americans organizations don't look at this legislation as some way to equalize all the things that have gone wrong in our society and our commitments as a government to the Native Americans, because I don't justify them and I regret that those things have happened—and they have, and we are all aware of that—but this legislation isn't to make amends. It is just to equalize the playing field if we can. That's how this Senator feels about it.

Mr. POWLESS. Mr. Chairman, may I respond to the Senator?

Senator ANDREWS. Surely.

Mr. POWLESS. Mr. Senator, the point you make is well taken. I guess sitting over there on your side in making your point of view, I guess, in all respect, I would have to sit over on this side and make my point of view also. That is that tribes themselves do not have a tax base, and the States themselves, wherever there are gaming operations going on, I suspect that they are heavily taxed by the State. As such, the tribes do not have a tax base.

They have looked at these businesses as a means to stabilize their economies.

Senator **DeConcini**. I understand. I understand that, and I don't dispute that, but also tribes don't pay property tax. They get certain benefits from the State. You can argue these things back. It seems to me like we have to try to keep this on the basis of equalizing what is fair for non-Indians. It ought to be the same standard that it is for the Native Americans, I think.

Thank you.

Senator **Andrews**. Thank you very much, Senator.

One question I have: have you had any contact, any of the five of you, with State gaming authorities? If so, what was the result?

Mr. **Bowen**. Yes, we have. We have had contact just as recently as about 3 weeks ago down in New Orleans at the annual meeting of the national association of all the gambling regulatory agencies of the States and the territories.

We were invited down to workshop and to panel the issue of gaming on reservations. We had a very fruitful meeting. We had a lot of dialog. We discussed all the different issues during the whole week. At the meeting before they had entertained a resolution to place—and it was a resolution that was going to come to this committee, it would be the recommendation—and it wouldn't be an unusual one coming from States' gambling control boards—to place us under State restraints and State regulations and State standards.

But, as a result—and I am really, really pleased to say this—as a result of that week-long meeting and the dialog and the mature, professional interaction that we had--and we did have to do a lot of communicating to begin with—that at the very end of the meeting only one State entertained that same resolution, and they could not receive a second—not even a second from all the other States. As a matter of fact, the executive board of directors and the whole conference voted to ask us and invite all the Indian tribes that would like to, to join their association. They felt it was for the good of the industry; that they wouldn't want to support a resolution like that. They felt it was destructive; that there was a lot of miscommunication that was going on as to the competition between the different games, and they felt that it was to the benefit of everyone to interact and to dialog and for us to join. I am proud to say that we are filling out an application in our tribe to join that association.

That is the kind of rapport and relationship that we encourage, and that works out really well. I think——

Senator **DeConcini**. Would the chairman yield?

Senator **Andrews**. Surely. I would be glad to yield.

Senator **DeConcini**. Was that a national——

Mr. **Bowen**. The National Association of Gambling Regulatory Agencies. It is the association for all the different gaming control boards in the States.

Senator **DeConcini**. Was the State of Arizona there; do you remember?

Mr. **Bowen**. Yes. In fact, your AG—assistant AG—was there.

Senator **DeConcini**. Do you know how Arizona voted?

Mr. **Bowen**. Arizona didn't vote to second, so——

Senator **DeConcini**. Arizona was not the State——

Mr. **Bowen**. No, it was the State of Washington. [Laughter.]

I can say that now.

Senator **DeConcini**. I thank you.

Senator **Andrews**. I just want you to know, Dennis, that John Jacobson from North Dakota is the president of that organization.

Mr. **Bowen**. Yes. Oh, a very capable individual—yes.

Senator **Andrews**. All North Dakotans are. [Laughter.]

Senator **DeConcini**. By the way, nobody argues with the chairman.

Senator **Andrews**. That's right. [Laughter.]

Mr. **Bowen**. In the State of Washington the chief counsel who heads up the gaming control board said it was the last time that they were going to introduce that resolution, too.

Mr. **Powless**. Mr. Chairman, we, too, have been in contact with the—in Wisconsin we have the Wisconsin Bingo Control Board. I have been in contact with the Wisconsin Bingo Control Board. As a matter of fact, the Wisconsin Bingo Control Board extended me an invitation to their meeting through President John Jacobson from North Dakota. We have begun to sit down and have dialog and to understand that we have mutual concerns and mutual respect for each other, and at the same time I think it also must be said that the State of Wisconsin is also in litigation right now over one of the gambling issues in the State of Wisconsin.

Senator **Andrews**. Thank you very much.

We would like next to call up the panel of our attorney general group: Robert Corbin, Rudolf Corona, and Michael Rumbolz, if you could come forward—let me assure you your prepared remarks will be appearing in total in the record. You can summarize them and save some valuable time.

Senator DeConcini, do you want to introduce the attorney general.

Senator **DeConcini**. I do, Mr. Chairman. I can't resist the opportunity to introduce to the committee here the distinguished attorney general who has a longstanding career in law enforcement in Arizona. He was the prosecuting attorney, the county attorney, of Maricopa County, the largest county, before he became attorney general.

Indeed, I am proud to say that he is an outstanding law enforcement official and an outstanding attorney general.

We welcome you here, Bob.

Senator **Andrews**. Given that introduction, I am sure your remarks will be brief and to the point and very illuminating.

STATEMENT OF ROBERT K. CORBIN, ATTORNEY GENERAL, STATE OF ARIZONA

Mr. **Corbin**. Well, I don't know about illuminating, Mr. Chairman, but I'll try.

Senator DeConcini, thank you very much for that introduction.

In answer to your question, the representative from my office who was down in New Orleans had to catch a flight and was gone, so we were not there to vote on that resolution. So that was the reason that Arizona did not participate, because he had to get back to the office. He is here today, Ian Macpherson. Maybe you know him.

Mr. Chairman, we have a little bit more of a problem in Arizona than it seems some of the other States are having. All I have heard about today is bingo.

We started about 3 years ago with bingo down on the Pascua Yaqui Reservation with a $100,000 jackpot. Arizona's law regarding bingo—we allow it but subject to certain limitations, like $1,000 jackpots, I think it is every 3 days. It must be a charitable institution in existence for 2 years.

As a result of two circuit court of appeals decisions which state that you cannot enforce regulatory statutes on Indian reservations, we have not done anything about—we are unable to do anything about the $100,000 jackpots which were contrary to our State regulatory statutes.

Since that period of time, we have seen a greater influx into Arizona on the Indian reservations concerning gambling.

First, let me state I like Senator DeConcini's bill that states that they shall follow State law. If the States allow it, fine, I have absolutely no problem with that at all. But if it is against State law, then they should not be allowed to do it on Indian reservations.

The next thing we found out in Arizona just recently, in the past 6 or 7 months—we found out that they were coming in with so-called video bingo machines. They're slot machines, Senator. They're not bingo machines. You put a quarter in, you pull the lever, and it goes across. If you win, you get a ticket. You go cash the ticket. That's a slot machine. It is in violation of State statute. It is also in violation of Federal statute. It is against the law in both jurisdictions, but yet it is going on on our Indian reservations, three of them in fact.

The next thing we found out—that there was going to be parimutuel jai alai coming into Arizona with parimutuel gambling on the Gila Indian Reservation, which we believe is against State law. We believe that that would be a violation of our gambling statutes in Arizona, a crime, not a regulatory statute. We also believe that, again, is in violation of Federal statutes.

Senator DeConcini, when your dad was attorney general, he wrote an opinion stating that jai alai was illegal in Arizona, and it's there. It is not my saying that it would be a crime committed in the State of Arizona. It's the Senator's father who said the same thing when he was——

Senator ANDREWS. What you are saying is that everything that's worthwhile DeConcini——

Mr. CORBIN. You betcha. [Laughter.]

What he said is the law. That's how we feel. [Laughter.]

We have information right now that keno is going up on the Fort McDowell Indian Reservation. The boards are going up. I understand they are ordered and they are going to be put up very shortly.

We also have some information—I don't know how reliable it is—that full-scale casino gambling is being contemplated on an Indian reservation in Arizona.

In light of all these problems—gee, if it were just bingo, I probably wouldn't even be here today—but all of these other problems we have, we see we have a problem.

Now, Senator, your bill goes to giving the Indians the authority to regulate that and, if they don't, the Department of the Interior. Well, my experience—and I'm only speaking from Arizona's experience—is that we feel they are already violating the law. So if you are going to let the Indians conduct and decide what they are going to do, they're doing it right now, which we feel is in violation of both State and Federal law.

I have written to the Department of the Interior trying to get the Department of the Interior to do something about it, because as far as the jai alai, they have approved the conduct and the operation of the parimutuel jai alai on the Gila River Indian Reservation.

I have another letter written to the Fort McDowell which does not say you can put them in, but they say, "We don't disapprove of the slot machines going in on our reservations." I don't trust Interior any more, to be perfectly frank with you.

Now we believe that the 1970 Organized Crime Control Act, which would make both the operation of jai alai and the operation of the slot machines illegal, and can be enforced by the Federal Government through Justice and Interior—we have the Federal Assimilative Crimes Act, which says, if it is a crime in a State, the Federal Government will come in and stop it. They did it up in Senator Gorton's State on the Lummi Indian Reservation there when they tried to go full-scale blackjack. They did a number of years ago. The U.S. attorney's office went in with an injunction and enjoined them.

I have had had meetings and written letters back and forth to Interior. They are attached to our written comments here. I said in there, if you are going to allow all this type of gambling, slots, and things like that, why don't you go ahead and allow them to have narcotics and prostitution and everything else? That could bring in money to the economies of the tribe. People say I'm shooting from the hip on that. That's not true. The supreme court of the State of Maine said that in a similar-type case when they were deciding whether or not gambling should be done in the State of Maine. That's from the supreme court of the State of Maine that that comment is made from.

I don't have a lot of trust, to be perfectly frank with you, in the Department of the Interior in enforcing the laws. They are not enforcing them now. I am having trouble. I met with Mr. Meese, with Attorney General Van de Kamp in California about 3 months ago when we were back here to a meeting. He was going to get together with Mr. Hodel and talk about it. That was 3 months ago, and still nothing has happened.

I just don't have a lot of faith, to be perfectly frank with you, in some of the departments of the Federal Government in enforcing these laws. Consequently, I think that the State should have a say in this matter.

I think, also, Senator DeConcini, your bill does not go far enough. Right now the Department of the Interior—we have a quote in ours right from the Department of the Interior people; all the checking they are doing is just for veneer.

You helped us, as you recall, on a case just recently involving what we believe to be organized crime. I thank you for it publicly here today. Without your help, we wouldn't be in the position we are today in having won that case by their conceding. We spent 2½ years digging and digging and digging on that particular matter.

Do we really believe that when organized crime comes in they are going to send somebody in with a criminal record? That's about all the checking they're doing right now. They bury it so deep that you've got to really dig and dig and dig and get in there.

The jai alai, they say they are going to build a $20 million fronton there. In their own publication—this is what they say—in the first year there is going to be $100 million gross take on this thing. That's big money. Historically, we have always found that where you have big gambling like in Atlantic City and Las Vegas, you're going to have organized crime. It's very tough. We're fighting this with our State lottery and with our State horse and dogs. We keep a very good eye on it—believe you me, we do—to see that we keep the proper people involved in those types of activities.

I'm willing to help, but I also think that part of the bill, too, Senator, that goes into the fact that only Federal agencies and things like that can see the books and records—I'm, as you know, a firm believer in open governments. I helped put through our open meeting law and everything else in Arizona.

I think that is the only way you can keep operations clean—is by having openness to the operations. I think that law enforcement, State law enforcement—city, county, and State—should be available to be able to go into any records dealing with gambling on Indian reservations. I also think that the media, both written and electronic, should be able to do so, because we have investigative reporting today. I know for a fact in my own office that reporters, television, and radio, have brought information to us that they have been able to dig up that shows crimes are going on in the State of Arizona. I like that concept. I think it is a joint effort. Both they and we want to keep our State clean. Consequently, I would like to see, if this bill passes, that law enforcement in the State should be able to see the records of what is going on—it is still within our State—as well as the media.

Those are some of the problems I see. I like the concept. I like the concept to allow it in the States, allow it on reservations, but no more and no less than it is allowed in the States.

[Prepared statement of Robert K. Corbin, attorney general, State of Arizona, and additional related correspondence, follows. Testimony resumes on p. 127.]

PREPARED STATEMENT OF ROBERT K. CORBIN, ATTORNEY GENERAL, STATE OF ARIZONA

Mr. Chairman and Members of the Senate Select Committee, I am Robert K. Corbin, Attorney General of the State of Arizona. I welcome the opportunity to express to you my views regarding S.902, the "Indian Gaming Control Act" in the context of gambling being conducted on Indian reservations in Arizona and elsewhere.

Let me first commend Senator Dennis DeConcini for his efforts in preparing and introducing S.902 and in bringing this issue before you. The questions which you address in your hearings today are extremely serious and deserve thorough debate and consideration. However, as I will indicate in my comments before you today, I believe very strongly that the prime responsibility for establishing and enforcing public policy on matters with such a particularly localized impact as those relating to gambling are uniquely within the province of the States and not the Federal Government. This has historically been true and should remain so.

In this regard as well, as I will discuss in more detail, I believe the existing Federal laws including specifically the Organized Crime Control Act of 1970 and the Federal Assimilative Crimes Act, if enforced, are not only adequate but reflect the correct relationship which should exist between the Federal Government, the States and the Indian tribes in this area. The crucial issue, however, is the existing enforcement, or more accurately nonenforcement policy with respect to these laws at the Federal level. My concern about the lack of enforcement compels me to urge you to hold hearings to determine why they are not being enforced.

During the past few years, the people of the State of Arizona, along with those of her sister States, have witnessed an alarming expansion of gaming and gambling activities being introduced into and conducted upon Indian reservations.

I say alarming because, in Arizona these gambling activities operate in open violation of State criminal laws and regulatory measures governing the control of gaming. This gambling activity, thus far, has primarily involved high-stakes bingo, some with advertised single prizes of up to $100,000. One proposal contemplated even higher prizes to be accomplished through a multi-reservation bingo simulcast via communications satellite.

Additionally, we have witnessed an influx of electronic "video bingo machines". These devices, which purport to be merely extensions of common bingo, are in my view illegal gambling devices (i.e., slot machines) under both Federal and Arizona law. We have also received information indicating that one Indian tribe is installing a full-scale keno operation and further information that full-scale casino gambling is being considered by another tribe.

Most recently, a private Florida corporation has entered into a series of agreements with the Gila River Indian Community to introduce parimutuel jai alai onto the Gila River Indian Reservation just south of metropolitan Phoenix. The proposed operation abuts Interstate 10 between Phoenix and Tucson. In public announcements, the parties to these agreements have stated that the $20 million jai alai fronton (i.e., playing arena) is anticipated to generate a first year "handle" (i.e., public wagering) of some $100 million.

Incredibly, such an operation, which flaunts both State and Federal law, has been approved by the Department of the Interior. In fact, the Deputy Assistant Secretary of Interior in charge of Indian Affairs has advised me that my request for rescission of the agreements would not be honored. He also revealed that the agreements in question were approved by the Area Director of the Phoenix Office of the Bureau of Indian Affairs with his (i.e., the Deputy Assistant Secretary's) concurrence.

The approval, in my view, is contrary to both State criminal law and Federal law, viz., the Organized Crime Control Act of 1970, 18 U.S.C. § 1955 as interpreted in United States v. Farris, 624 F.2d 890 (9th Cir. 1980), cert. denied sub nom. Baker v. United States, 449 U.S. 1111 (1981). Although I have made my views known in letters to the Secretary of the Interior, the only response thus far from the Deputy Assistant Secretary has been that he concurred in the approvals and that he felt that "...the tribe should have the opportunity to test the legality of its proposal in court." I have attached copies of my correspondence with the Department of the Interior detailing these events.

As a result of these matters, the Indian tribe and the Florida corporation each have filed a lawsuit in United States District Court in Phoenix, using the Department of Interior's approval as a sword to seek both a declaratory judgment and an injunction forbidding me from enforcing Arizona's gambling laws against the operation. I intend to vigorously defend these lawsuits and further, to take such other actions as I deem necessary to enforce Arizona's gambling laws.

As the chief law enforcement officer of the State of Arizona, I wish to express to the Committee my urgent concern regarding the dangerous proliferation of gaming and gambling operations on Arizona's as well as the nation's Indian reservations. In the States of Arizona, California and Nevada alone, there are nearly 150 separate and distinct regions of "Indian country." These areas, whether located on a remote Interstate highway or situated in a metropolitan locale of millions, each hold the potential for illegal gambling under the presently permissive attitude of the Department of the Interior.

In this regard, I share certain of the views articulated by the Department of Justice in its June 19, 1984 comments upon H.R. 4566, 98th Cong., 1st Sess. (1984). There, Criminal Division Deputy Assistant Attorney General Mark M. Richard accurately pointed out that the sudden growth of "high-stakes" gambling operations on Indian reservations has generated substantial concern among both Federal and State law enforcement authorities.

The source of the concern is the attraction that lucrative gambling operations will have for organized criminal elements. This is particularly true where large sums of cash are involved and where the jurisdictional confusion created by the situs of the gambling, Indian country, frequently constitutes an open invitation to opportunism.

Furthermore, the concern is neither abstract nor imagined. High-stakes gambling involves large and fast-moving cash transactions. Thus, the opportunities for "skimming" and "laundering" are vast. In addition, those involved in the operations, including tribal-member employees, may become susceptible to corruption and dishonest manipulations. Support services which facilitate the gambling operations, including security, food, liquor, janitorial, sanitation and similar services, are also lucrative attractions to racketeers and those who would protect their insidious grip through violence and threat.

In this regard, the States of the nation have a clear and compelling interest in opposing Indian country gambling operations where such activities hold the potential for creating havens for criminal acts and corrupt practices. Historically, since the States have had the prime responsibility for the enforcement of laws having a particularly localized impact, such as laws relating to liquor and gambling, it should not be the Federal policy in this area to disregard or preempt these legitimate State concerns.

Accordingly, since the various States have a substantial and legitimate interest in protecting their citizens from the evils of gambling-related crime -- both on and off Indian reservations -- through the enactment of State laws intended to promote this interest, it should not be the Federal policy to convert Indian reservations into marketplaces within which gambling activities exempt from the operation of State and Federal gaming laws are promoted. Rather, the national policy should be to mandate the enforcement of existing State and Federal laws regarding gambling in Indian country.

Such laws include the Organized Crime Control Act of 1970 (18 U.S.C. § 1955) and the Assimilative Crimes Act (18 U.S.C. § 13) (as made applicable to Indian country under 18 U.S.C. § 1152), which incorporate existing State laws, and the Indian Country Gambling Device Act (15 U.S.C. § 1175). Enforcement of these existing laws should be pursued without regard to the artificial and fallacious "civil/regulatory vs. criminal/prohibitory" distinctions which have formed the basis for various court decisions in this area in the past.

Such a policy would not only comport with common sense, it would be consistent with the June 7, 1985 Indian gaming policy statement resolution adopted at its annual meeting by the Conference of Western Attorneys General. That resolution urges Congress to recognize that State and local jurisdiction over gaming on Indian reservations is essential to State sovereignty and should not be usurped or taken over by the Federal government. The resolution, a copy of which I have attached to my comments, also urges the President, as well as the Departments of Justice and Interior, to support the States in Federal court litigation in asserting State jurisdiction over Indian gaming.

The argument that Indian country gambling should be permitted free of State or local regulation because of the need to improve tribal economies is totally unpersuasive and misleading. The States have not only a right but an obligation as well to protect all of their citizens, Indian and non-Indian alike, from the dangers of gambling conducted in violation of State laws. Moreover, it is clear that even certain tribal members disagree over the wisdom of improving tribal economies through gambling. For example, the tribal resolution relating to the proposed jai alai fronton passed by a vote of seven in favor, three opposed and seven absent.

I must therefore strongly emphasize that economic motivation is a totally inappropriate justification for the violation of State criminal laws. And yet, under the guise of economic improvement, Indian country gambling is labeled by its proponents as nothing more than an exercise of tribal sovereignty. With due respect, the doctrine of tribal sovereignty should not be transformed into a license to violate with impunity the criminal laws and public policies of the States wherein tribal governments exist.

As you consider the legislation before you I urge you to step back and reflect very carefully on the long-range impact of your actions. What is done or not done in this area will be evaluated years from now and I submit from perhaps a radically different perspective. You have heard or will hear that Indian gambling is simply an exercise in tribal sovereignty. You no doubt will also hear substantial testimony that Indian gambling, if not a panacea for the economic problems existing on America's reservations, at least holds within it tremendous potential for economic revitalization of those reservations. In considering those arguments you must ask yourselves: (1) is the issue really that simple?, (2) who will, in fact, benefit, Indian people or non-Indian promoters?, and (3) at what cost?

The States have a clear interest in protecting these principles, but S.902 fails to serve these objectives. Thus, I would strongly urge the Committee to approach the issues from the perspective of the Conference of Western Attorneys General. Only then may the legitimate interests of the States be adequately protected.

In this regard, although I disagree with the absence of State law enforcement responsibilities in the bill, I agree with the limitation in § 6(a) providing for the licensing or regulating of gaming within Indian country only where the gaming activity is not otherwise prohibited by Federal law or State public policy as a matter of criminal law. I also agree with the proviso of § 6(c) requiring that the licensing requirements and regulations governing such gaming be at least as restrictive as State law and that gaming licenses may not be issued unless the applicant is otherwise eligible to obtain a State license to conduct the same gaming activities under State law. These are absolutely critical safeguards against the evolution of Indian reservations into gambling havens within the borders of the States.

However, many of the other provisions of S.902 greatly trouble me because they are inadequate to address the law enforcement and public policy concerns of the States. Even in States which have strong and sophisticated gambling control agencies, the lure of reservation gambling operations holds the danger of criminal infiltration, both organized and local. S.902 does not go nearly far enough to address these perils.

The overall approach of S.902 is to legitimize gambling operations in Indian country without adequate safeguards against criminal and corrupt practices and without due deference to the legitimate law enforcement and public policy concerns of the States. The most troubling deficiency of the bill is the complete lack of State law enforcement involvement in the process. Instead of State responsibility, the sole enforcement authority is placed with the Secretary of the Interior.

In light of Arizona's experience with the controversy regarding slot machines and the proposed jai alai fronton, I am genuinely alarmed at the prospect of the Department of the Interior, rather than the respective States, being empowered to determine whether or not a State criminal law is being violated by Indian country gambling. Long-recognized principles of federalism and comity require that the States' concerns be accorded greater deference than that being proposed in this bill.

For example, § 7(a)(i) of S.902 deals with background checks of individuals having either a financial interest or managerial responsibility under Indian country gambling management contracts. It is my view that the information being required is completely inadequate. Interestingly enough, in October, 1983, in response to a reporter's inquiry about the adequacy of Department of Interior and Bureau of Indian Affairs criminal background checks being given to tribal bingo operations, the Deputy Assistant Secretary conceded: "What we're apparently giving them is a veneer check and nothing beneath the veneer."

With due respect again, the legitimate law enforcement and public policy concerns of the States should not be transferred and entrusted to Federal authorities who contend on the one hand that they safeguard tribal gaming operations as well as the public at large, but who on the other hand admit that their efforts have in the past amounted to nothing but a hollow veneer. With admissions such as that, it should come as no surprise that the States would view with a jaundiced eye the purported ability of the Department of the Interior to effectively regulate in this subject matter area.

Another example of the shortcomings of S.902 is found in § 9 of the bill. As the chief law enforcement officer of the State of Arizona, I am deeply troubled by the requirement of that section that audit results and records respecting the gross income produced by a gaming business in connection with Indian country gambling activities are declared to be "... private and confidential and such information shall not be subject to disclosure to the public."

While this provision may not be as onerous as that proposed informally under § 9 of the "National Indian Gaming Task Force 'Indian Tribal Gaming Act'" (imposing felony sanctions for the disclosure of such information for any purpose other than enforcement of Federal and tribal laws), I can perceive no legitimate objective being served by such a prohibition. Legalized gambling activities, whether or not conducted on Indian reservations, should take place in the sunshine rather than the darkness.

Exemption from public scrutiny -- presumably extending to State law enforcement authorities as well as to the print and electronic media -- can only invite, rather than discourage, illegal activities and other forms of corruption.

Finally, § 11 of S.902 contemplates the creation of the right in the Indian tribes to organize and establish a Regional Indian Gaming Commission for each of the jurisdictional area offices of the Bureau of Indian Affairs wherein such tribes' reservations are situated. Section 11(c) provides that upon the effective dates of the respective Commissions' governing documents, "...[a]ll of the Secretary's authority and responsibilities pursuant to ... [S.902] shall be subsumed by the respective Commissions in such area...." I am deeply troubled by this provision.

Without regard to my opposition to the lack of State law enforcement authority envisioned in this section, my fear is that, absent direct prior involvement by the Secretary of the Interior in the policies and processes contemplated in S.902, however weak and ineffective as that involvement might be, the legitimate concerns of the States will be detrimentally affected. While I recognize that § 11 is intended to facilitate a realization of tribal sovereignty and self-governance in the area of Indian country gambling, the approach proposed in § 12 of the bill, authorizing the Secretary to suspend the operation of any Commission and reassume responsibility still fails to meet the legitimate law enforcement and public policy concerns of the States.

In summary, it is my position that the major source of friction between the States and Indian reservation gaming operations is the blatant and arrogant disregard of State laws placing restrictions on various aspects of gambling activities. Under the rationale of Rice v. Rehner, __ U.S. __, 103 S.Ct. 3291 (1983), the States have a legitimate and compelling right to protect their citizens, Indian and non-Indian alike, from the evils of unrestricted or illegal Indian reservation gambling operations because of the substantial impact such operations may have both within and beyond the reservation boundaries.

Accordingly, the formulation of a uniform Federal policy in this area should be guided by traditional notions of State responsibility in areas of State concern rather than short-sighted and erroneously motivated objectives of permitting Indian country gambling completely immune from State regulation. Tribal sovereignty and self-government with regard to purely internal, tribal matters do not have the same force or applicability when large numbers of non-tribal members are involved. The lure of gambling free of State control, with all of the attendant evils, is a matter of clear and urgent concern to the States because of the historical dangers inherent in such activities.

As the elected representatives of all the people, it should not be the policy of this Committee or of Congress to disregard these State law enforcement and public policy concerns. I truly hope that such will not be the case with regard to S.902.

In closing, I hope that the Committee will give serious consideration to my remarks as well as to the comments submitted by Arizona's sister States. The States can no longer abide the paralysis of action and will that has characterized the Federal response to these issues in the past. In this regard, the Committee should consider holding hearings to determine why the responsible Federal officials have failed to enforce the existing laws and implement a uniform national policy in this area before now. Thank you for extending to me the opportunity to present my views on these important issues.

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin
[602] 255-4266

March 20, 1985

Hon. Donald P. Hodel
Secretary, Department of the Interior
18th & C Streets, N.W.
Washington, D.C. 20240

Re: Indian reservation jai alai

Dear Secretary Hodel:

I take this opportunity to write to you in an attempt to bring to your attention a situation now developing within the State of Arizona which is of great concern to me. I am referring to the proposed introduction into the State of Arizona of parimutuel jai alai sought to be conducted on the Gila River Indian Reservation near Phoenix.

Without belaboring the point in this letter, it is my position as the chief law enforcement officer of the State of Arizona that, if carried out, parimutuel wagering on jai alai games -- whether on or off the Indian reservations of the state -- would violate the criminal/prohibitory provisions of Arizona law with respect to "sports betting," in particular, Ariz. Rev. Stats. § 13-3307 and Ariz. Rev. Stats. § 5-112(D) prohibiting parimutuel wagering except on horse races and dog races. I have enclosed copies of those statutes for your reference as well as a copy of a memorandum which has been prepared for me detailing the broad general topic of gaming on Indian reservations in the State of Arizona, including the proposed Indian jai alai games.

Moreover, it is my position that the fact that Arizona permits parimutuel wagering on horse races and dog races does not suggest, nor much less require, that any and all other forms of parimutuel wagering, if conducted within the exterior boundaries of an Indian reservation, must therefore be allowed to proceed free from the reach of state law. These legal principles will presumably be determined by a court or courts of competent jurisdiction.

The focus of my concern in this letter, however, relates to that certain lease which was purportedly approved on January 21, 1985 by the Phoenix Area Office Director of the Bureau of Indian Affairs, Mr. James H. Stevens, concerning the proposed jai alai games. The lease (identified as "Lease B-GR-173") is between the Gila River Indian Community and C.A.H.K, Inc., a Florida corporation proposing to build and manage the jai alai fronton. A copy of Mr. Stevens' approval is enclosed for your information.

Since it is my position that Arizona law would prohibit parimutel jai alai, and would enforce such prohibition with felony criminal sanctions, I believe that the lease should not have been approved in the first place. Neither this office nor any of its staff attorneys were, to the best of my knowledge, contacted or consulted by either the parties to the lease or by Mr. Stevens prior to the purported approval. In view of these facts, I would strongly urge you to take the necessary steps to reconsider the propriety of Mr. Stevens' actions and, ultimately, to proceed to rescind the said approval.

In this regard, my concern over the lease is not confined to an abstract disagreement over its objectives: specific provisions of the document raise serious legal questions quite apart from my underlying legal position. For example, ¶ 21 of that lease provides:

> 21. TERMINATION OF FEDERAL TRUST
>
> Nothing contained in LEASE shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the PREMISES by the issuance of a fee patent or otherwise during the term of LEASE; however, such termination shall not serve to abrogate LEASE. The TRIBE and the LESSEE and its surety or sureties shall be notified of any such change in the status of the land. (Emphasis added)

I am aware of the general requirement of 25 U.S.C. § 415c that language similar to this be included in leases approved under 25 U.S.C. § 415. My concern, however, relates to the provision stating that a termination of the trust relationship between the Federal Government and the Gila River Indian Community with respect to the leased premises would not operate to abrogate the lease. The declared purpose of the lease is to permit the playing of parimutuel jai alai within the exterior boundaries of the Gila River Indian Reservation. The above-quoted language seems clearly to contemplate that neither the issuance of a fee patent nor a disestablishment of the Gila River Indian Reservation, or that portion whereon the fronton is proposed, would have any effect upon the continued playing of parimutuel jai alai.

It is my position, as previously stated, that parimutuel jai alai would be a prohibited, criminal activity on Indian reservations under Arizona law. Moreover, by operation of 18 U.S.C. § 13, the "Assimilative Crimes Act", and 18 U.S.C. § 1152, the "Indian Country Crimes Act", it is my position that a federal offense might exist as well. Even if that were ultimately held to be in error, however, I am aware of no authority which would permit the continued playing of parimutuel jai alai once an abolition or disestablishment of the federal trust character of the fronton site had occurred.

It also is my position that the only theoretical argument even remotely supporting the contention that such jai alai games may proceed free from the prohibitions of state law is premised upon the asserted insulation from such laws provided by the federal trust status of the Indian reservation land. Even under positions opposed to mine, the existence of an Indian reservation site is the mandatory jurisdictional prerequisite to the proposed gaming activity.

In addition to the foregoing, I am also concerned about certain other provisions of the lease which seem to contemplate the potential for the introduction of other forms of gaming onto the reservation. See, e.g., ¶ 34 dealing with the management rights of C.A.H.K., Inc. regarding "...other forms of gaming (if any) . . . ." Specifically, I have been personally informed that the Bureau of Indian Affairs has also approved of the use of "video bingo" machines on the nearby Ft. McDowell Indian Reservation. I have also been told that these types of machines are in use on the Papago Indian Reservation near Tucson, but I have no indication of BIA approval in that instance.

It is my position that these devices are nothing more than variants of slot machines and, as such, are prohibited gambling devices under both state and federal law. I refer you to the enclosed memorandum, p.8, n.10, discussing this situation. If such machines were introduced onto the Gila River Indian Reservation, whether or not pursuant to the terms of the lease here in question, I would view that as yet another violation of the law.

Accordingly, since this situation is of urgent concern to me, I would request that you inquire into this matter and either rescind the approval or advise me of the basis for Mr. Stevens' approval of the lease in question, particularly ¶¶21 and 34 thereof. Moreover, I would also request your re-examination of the approval of the "video bingo" machines on the Ft. McDowell Reservation and the status of the machines on the Papago Reservation. Your prompt attention to these requests is most appreciated.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

APR 12 1985

Honorable Bob Corbin
Attorney General
State of Arizona
1275 West Washington
Phoenix, Arizona 85007

Dear Mr. Corbin:

The Secretary has asked me to respond to your letter of March 20, 1985, requesting that he inquire into, and possibly rescind, the Phoenix Area Director's approval of a lease between the Gila River Pima-Maricopa Indian Community and C.A.H.K., Inc., relating to a proposed jai alai operation.

The Area Director's approval of the lease is now final for the Department since no administrative appeal of that approval was timely filed. The Secretary has authority to cancel a lease for violation of the lease or the regulations in 25 C.F.R. Part 162. See 25 C.F.R. § 162.14. However, he has no authority to rescind approval of a lease, once that approval is final, and any attempt to do so is likely to be viewed as an attempted Fifth Amendment taking.

You express particular concern about sections 21 and 34 of the lease. Section 21 provides that termination of the federal trust will not abrogate the lease. This provision, as you correctly surmise, is mandated by federal statute, 25 U.S.C. § 415c, a relic of the now-repudiated termination policy. Section 34 of the lease gives the lessor the first right to hold the license for all pari-mutuel wagering and other forms of gaming (if any), with the exception of bingo.

You believe that § 21 would authorize jai alai on non-reservation fee land should the Gila River Reservation be terminated. However, that section does not so provide. In any event, the provisions of this lease could not control the law with respect to the conditions under which jai alai would or would not be legal in such a case. Your concern about § 34 is with the phrase "other forms of gaming (if any)." Whether any particular form of gambling would be legal on the Gila River Reservation is a matter controlled by federal law rather than by the terms of this lease.

The Area Director's approval of the Gila River documents was given with my concurrence. It is my view that, because of the potential economic benefit of the project to the Gila River Tribe, the tribe should have the opportunity to test the legality of its proposal in court. As I am sure you are aware, this

Administration is strongly supportive of tribal initiatives for development of reservation economies.

You also express concern about "video bingo" machines. I am aware that video bingo machines are in use on the Fort McDowell and Papago Reservations. The BIA has never formally approved the use of these machines. While I understand that the Fort McDowell Field Representative wrote to the chairman of the Fort McDowell Indian Community in October, 1984, stating that he had no objection to the use of video bingo machines, that letter was not written in the context of approval of any document. The Field Representative, of course, has no authority to take a position for the Department with respect to the legality of these machines. I regret any misunderstanding the letter may have caused.

Our Phoenix Field Solicitor's Office has been in touch with the U.S. Attorney's Office since July, 1984, regarding the applicability of 18 U.S.C. §§ 1171-1175 to video bingo machines. This Department, of course, defers to the Department of Justice and the U.S. Attorney in the interpretation of this criminal statute and will cooperate with the U.S. Attorney should he determine that action should be taken in this instance. By copy of this letter, I am requesting the Field Solicitor's Office to remain in touch with the U.S. Attorney's Office on this matter.

If I may be of any further assistance, please let me know.

Sincerely,

John W.

Deputy Assistant Secretary--
Indian Affairs

cc: Area Director, Phoenix
Field Solicitor, Phoenix
U.S. Attorney, Phoenix

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin

April 25, 1985

Mr. John W. Fritz
Deputy Assistant Secretary for
Indian Affairs
U. S. Department of the Interior
Bureau of Indian Affairs
Washington D.C. 20245

Dear Mr. Fritz:

Thank you for your letter of April 12, 1985. I am disappointed that neither you nor the Secretary seem to appreciate the seriousness of the threat posed to Indian and non-Indian law-abiding citizens by this increased level of gaming activity on Arizona's reservations.

I am, of course, aware of and support the administration's efforts to strengthen tribal initiatives for development of reservation economies. However, those initiatives cannot be built on direct violations of fundamental state criminal law. Such a policy would neither be good for the Indians or the non-Indians within our jurisdiction.

By turning America's Indian reservations over to the corrupting influences of certain aspects of the gambling industry, you are subjecting a predictable number of Indians to increased deprivation and lawlessness. This is as certain as if your policy were to strengthen Indian economies by allowing them to traffic in narcotics or dangerous drugs. Can it really be your intention to turn American's Indian reservations into havens for prostitution and narcotics and gambling? Do you really believe that following this policy serves the best interests of any Americans, Indian or non-Indian? May I respectfully suggest that the only groups certain to thrive as a result of this interpretation of the President's support for strengthening tribal economies are those powerful and insidious forces in America controlling organized crime. You are naive to think anything else will occur.

Very truly yours,

Bob Corbin

BOB CORBIN
Attorney General

BC:pb

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin
(602) 255-4266

May 10, 1985

Hon. Donald P. Hodel
Secretary, Department of the Interior
18th & C Streets, N.W.
Washington, D.C. 20240

Re: Indian reservation gaming

Dear Secretary Hodel:

On March 20, 1985, I wrote to you expressing my concern over the proliferation of certain gaming activities on Arizona Indian reservations, primarily regarding parimutuel jai alai and video bingo machines. On April 22, 1985, I received Deputy Assistant Secretary John W. Fritz' response, on your behalf, by letter dated April 12, 1985.

In that letter, Mr. Fritz takes the position that my concerns over the introduction of parimutuel jai alai onto the Gila River Indian Reservation (just south of metro Phoenix) are unfounded. If I may quote from Mr. Fritz' letter:

> "The [Phoenix] Area Director's approval of the Gila River [lease] documents was given with my concurrence. It is my view that, because of the potential economic benefit of the project to the Gila River Tribe, the tribe should have the opportunity to test the legality of its proposal in court."

I trust that you are by now aware that, as a result of these actions, two lawsuits have been filed in United States District Court in Phoenix involving these issues. The lawsuits, filed against me by the Gila River Indian Community as well as the non-Indian jai alai promoters, seek a declaratory judgment that Arizona's gambling laws and regulations may not be applied or enforced as to parimutuel jai alai wagering within the reservation boundaries. The suits also seek a permanent injunction prohibiting me from enforcing those laws against the Indians' or promoters' activities regarding parimutuel wagering on jai alai on the reservation.

I had originally hoped that the legal questions surrounding these proposed activities could have been resolved without the need for litigation of this sort. Moreover, I had been under the impression that it was the position of the Department of the Interior, if not the Bureau of Indian Affairs, that in situations where a particular gaming activity was criminally prohibited by state law -- as opposed to provisionally permitted under state civil regulatory authority --, the federal policy should be to recognize and defer to the state law.

In view of the response contained in Mr. Fritz' April 12, 1985 letter to me, I gather that my former belief was in error. Parenthetically, I have replied to Mr. Fritz by letter dated April 25, 1985 expressing my disagreement with his conclusions.

I have publicly stated that, under current decisional authorities, if an Indian tribe wishes to conduct on its reservation the same gaming enterprises or activities which are otherwise permissible and civilly regulated under state law, it may freely do so. However, where a proposed gambling activity is not otherwise specifically permitted or regulated, but instead is prohibited statewide by virtue of public policy as a matter of criminal law, such gambling activity should not be permitted on Indian reservations within the state.

In point of fact, at least three separate congressional proposals have thus far recognized this principle, specifically, S. 902, 99th Cong., 1st Sess. §§ 6(a), 6(c), H.R. 1920, 99th Cong., 1st Sess. §§ 6(a), 6(c) and H.R. 4566, 98th Cong., 1st Sess. §§ 6(a), 6(c). In each of these bills, a congressional deference to the legitimate interests of the states' respective criminal law public policy concerns is recognized. I found no such deference in Mr. Fritz' response to me.

In conclusion, my purpose in this letter is to again bring to your attention the urgent need for the formulation of a fair, uniform and balanced federal position which recognizes not only factors associated with the improvement of reservation economies, but also reflects the legitimate concerns of the states that their public policies relating to criminal law enforcement matters not be ignored.

I look forward to working with the Department of the Interior, the Department of Justice, the United States Attorney's Office as well as the attorneys general of the various states where these issues arise in addressing and, hopefully, resolving these complex questions. Thank you for your consideration of my views.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

CONFERENCE OF
WESTERN ATTORNEYS GENERAL
THE COUNCIL OF STATE GOVERNMENTS

720 SACRAMENTO STREET, SAN FRANCISCO, CALIFORNIA 94108 (415) 986-3760

APPROVED RESOLUTION NO. 85-1

INDIAN GAMING POLICY STATEMENT

(Introduced by Attorney General Brian McKay, Nevada)

WHEREAS, unregulated Indian gaming represents a threat to the public welfare of the nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gaming; and

WHEREAS, unregulated Indian gaming represents a threat to the welfare of the various Indian tribes because it may subject the tribes to the corrupting influences of organized crime; and

WHEREAS, the regulatory apparatus proposed by S902 and HR1920 are totally inadequate to address the problem of infiltration and control by organized crime of Indian gaming; and

WHEREAS, the states have traditionally regulated gaming and provide the best means of addressing the threats posed by unregulated Indian gaming;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Western Attorneys General urge President Reagan and the Interior and Justice Departments to support the states in their litigation in the Federal courts to assert jurisdiction over Indian gaming; and

BE IT FURTHER RESOLVED that the Conference of Western Attorneys General urge Congress to recognize that state and local jurisdiction over gaming on Indian reservations is essential to state sovereignty and should not be taken over by the Federal government.

(RESOLUTION APPROVED BY THE CONFERENCE AT ITS 1985 ANNUAL MEETING ON JUNE 7 IN JUNEAU, ALASKA)

AG14R85-1

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1985 JUL 11 PM 12 40

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin
[602] 255-4266

July 8, 1985

Hon. Mark Andrews
Chairman, Senate Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: S. 902

Dear Senator Andrews:

I take this opportunity to again express to you my appreciation for the time afforded to me last month to offer my remarks on S. 902 concerning the regulation of gambling activities on the nation's Indian reservations. I look forward to continuing participation in this complex and significant area.

In this regard, however, after having heard various statements and read certain prepared comments of others, I feel that I must respond to two assertions leveled against the position I have taken.

The first assertion is contained in the prepared comments of Mr. Richard M. Yetwin, counsel for C.A.H.K., Inc., pp. 7-8. There, an attempt is made to characterize my opposition to the proposed introduction of parimutuel jai alai into the State of Arizona as being motivated primarily by a concern that Arizona will lose tax revenues. The suggestion is made that a state could, "... under the guise of passing a criminal statute ...," enact legislation that would prohibit particular gambling activities and thereby dissuade developers from investing in Indian reservation-based gaming enterprises, thereby protecting the state treasury from lost gambling tax revenues. It is also implied that my opposition is premised upon a concern over loss of tax revenues, rather than enforcement of existing Arizona criminal laws, because the Chief Counsel of the Tax Division of my office was selected as record counsel in the U.S. District Court actions in Phoenix where these matters are being litigated.

Each of these suggestions is an erroneous mischaracterization of the true facts.

To begin with, while there may be some tax ramifications flowing from the litigation, the lawsuits concern themselves with the propriety, under existing Arizona criminal law, of the proposed introduction of parimutuel jai alai onto an Indian reservation. Moreover, even a cursory reading of the lawsuit filed by C.A.H.K., Inc. will reveal the complete absence of any suggestion, much less actual allegation, that the dispute is merely one involving taxes.

Furthermore, the selection of Assistant Attorney General Ian A. Macpherson, who is Chief Counsel of my Tax Division, was based upon his extensive experience in litigation concerning Indian law. That experience has included representation of the Arizona Department of Revenue in connection with its duties of regulating the licensing and conducting of games of bingo under Arizona law (A.R.S. §§ 5-401--5-429) which has also involved extensive examination of the implications of the playing of bingo on Indian reservations. Thus, Mr. Macpherson was selected on the basis of his experience and familiarity with the area of Indian law and not because of the purported nature of the dispute as a "tax" case.

I of course continue to disagree with a variety of other statements contained in Mr. Yetwin's prepared remarks. In this regard, I disagree specifically with his urging that § 6(c) of S. 902 be changed so that any Indian reservation gambling activity which was "similar" to that permitted by the state would be permitted even though it was not the "same" activity. I note parenthetically that Mr. Yetwin's comments on p. 8, purportedly referring to § 6(c) of S. 902, erroneously quotes a similar, but not identical provision from § 6(c) of H.R. 1920.

In this regard, one need look no farther than the experience on California Indian reservations to see the perils of such a change. There, the playing of "bingo" soon evolved in such curious, but allegedly "similar" games as "bingo-jack" (*i.e.*, blackjack card games with the prefix "bingo") and "horserace-bingo" (*i.e.*, wagering on horseracing with the suffix "bingo").

If § 6(c) of S. 902 were to be altered as suggested by Mr. Yetwin, I fear that the Congress would be institutionalizing and codifying the precise evils which state law enforcement authorities oppose. Accordingly, § 6(c) should not be changed as Mr. Yetwin suggests, but should instead be made even stronger to clarify that, unless a particular, specific gaming activity is authorized, rather than prohibited by state law, it would not be permitted within Indian reservations.

I look forward to hearing from you with regard to subsequent developments and hearings on S. 902.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

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Senator DECONCINI [acting chairman]. Mr. Corbin, thank you very much for your testimony. We will have some questions.

Mr. CORBIN. Yes.

Senator DECONCINI. Mr. Corona?

STATEMENT OF RUDOLF CORONA, JR., DEPUTY ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

Mr. CORONA. Senator DeConcini, the State of California thanks you for allowing us time to be heard on this matter.

I would preface my comments by stating that the tribes here have continually framed this issue as one of managing their own affairs, but, in essence, their conduct here has a dramatic impact on the States as a whole. Truly, this is a situation in which the tribes are seeking to market an exemption.

We have not conceded, in fact, the validity of the ninth and fifth circuit opinions in this case. Indeed, we are now fighting the matter again before the ninth circuit in the case of the *Morongo and Cabazon Bands of Mission Indians* v. *the County of Riverside and State of California.*

With regard to the attempt by the tribes to market an exemption, the Supreme Court has recently refused such an argument in a tribe's attempt to market the ability to sell liquor outside of State law. In doing so, the Supreme Court stated that, as far as commercial advantage, the Congress never intended to make the tribes super citizens. In fact, the tribes do owe an obligation to the larger community. The law is clear that the Congress retains plenary authority over the tribes and any rights granted them are subject to their complete defeasance by the Congress.

As I've stressed before, the Congress has twice spoken on this area. It spoke in the enactment of the Organized Crime Control Act of 1970 and the Assimulative Crimes Act. Those statutes make it a criminal offense to conduct illicit gambling operations on Indian lands, and the Organized Crime Control Act defines illicit gambling operations as any gambling operations which are in contravention of State law.

Senators, there is a real and serious threat to the State in the unregulated nature of these gambling endeavors. In fact, the disrespectful and shortsighted nature in which the tribal leaders have addressed the States' legitimate concerns over organized crime involvement in this area I think was typified by Mr. Powless' vile, intentional slandering of me by referring to me as "Juan Corona" in his introduction.

Nevertheless, Mr. Powless and the agency which he supposedly heads to regulate organized crime know it exists. A striking example of that is what is happening at the Cabazon Reservation.

As I stressed to the House, in that case a non-Indian, John Nichols, has run the tribe for 7 years. Earlier this year he was arrested for the crimes of soliciting to commit the murders of five people. He has since, in a plea bargain, been convicted of two of those crimes and was sentenced to prison.

Nevertheless, the Nichols family continues to run the Cabazon Tribe, and in a public interview John Nichols, Jr., admitted to having received a $50,000 loan from organized crime associate Tommy Marson to run the gambling operation.

In addition, he also admitted to hiring well-known organized crime associates Rocco Zangari and Irving "Slick" Shapiro. Indeed, Mr. Zangari was later indicted in Los Angeles for racketeering and Mr. Zangari offered that the Nichols had been systematically looting the tribe.

We have also found tribes now seeking our help, claiming that in fact the management companies have taken them over. As I explained earlier to the House of Representatives, we feel political takeover of other tribes is inevitable. The reason for this is, since the tribes, for purposes of administration of their own governments, are autonomous and are shielded from civil suit, the tribes have the ability to walk away from any contract they form. Management companies, therefore, realize that the contracts, the lucrative contracts which they have framed, are good only for so long as they control the entity in power. They have done that today by primarily financial enticement.

A good example of that occurred on the Barona Reservation. The tribe had never received any per capita share of moneys from the operation, although the bingo hall had run for over 2 years. Enough votes were mustered by the tribal membership to force a recall of the tribal chairman. Magnanimously, a few days before—shortly before—the recall election was to take place, the management company and the chairman magnanimously decided to release the first per capita share of $3,000 per voting tribal member.

The U.S. Attorney's office in San Diego is investigating that incident because of allegations that tribal members were compelled to reveal their vote in advance of receiving their check.

I would urge this committee to look carefully at the testimony presented by Mr. Mark Richard of the U.S. Department of Justice in his presentation in June of last year on H.R. 4566. The Department of Justice there unequivocally concluded that neither the Department of the Interior nor the tribes have the ability, the expertise, or resources to adequately prevent the intrusion of organized crime, nor do they have the ability to deal with it once they find it in their midst.

We strongly object to this bill which we believe not only would codify an incorrect ninth circuit and fifth circuit analysis of the law in the area, but we most strongly disagree that the regulatory provisions of the bill would accomplish its intended goal.

In fact, by allowing regional gaming commissions, I believe this committee would be assuring that no adequate safeguards for the health and safety of the community at large would occur.

Again referring to the testimony of Mr. Mark Richard, and also relying on our own analysis, history has taught the U.S. Congress that large stakes, unregulated gambling, draws organized crime. It has always done so and it continues to do so.

These operations are even more attractive to organized crime, and the reason for that is because of the governmental status of the tribes. It acts as a shield preventing law enforcement entities from peering into and understanding what is actually happening to the moneys that are being taken in.

In addition, large, fast-moving cash transactions always carry the tremendous capability of skimming, laundering, and also, as the Federal Department of Justice pointed out, these operations provide a great opportunity for organized crime through domination of related services such as credit leading to loan sharking and food services and so forth.

In yesterday's testimony before the House of Representatives, I was quite surprised that the counsel for Morongo indicated that she felt that the laws presently allowed the States to review the books of tribal organizations to insure against skimming and laundering. That's quite a different stand than she took in the litigation. In fact, she refused to divulge any records to us, contending as tribal business it was governmentally protected under secrecy provisions.

Well, nevertheless, we welcome her extension to reveal those books, and we will take that opportunity, if she again affords it to us.

But it is important that State and local entities are allowed to review what is happening in those States which allow State-sanctioned gambling. Careful precautions are built into the legislation to insure not only the fairness of the games themselves, but to insure that the moneys are adequately accounted for and are properly disbursed. We have no such safeguards in Indian gambling.

Senator DeConcini. Mr. Corona, I hesitate to interrupt you, but we have a host of witnesses here and time is running. If you could summarize, we could leave the record open after this hearing for any further statements that you would like to submit to us.

Mr. Corona. Yes. I would just conclude by referring to a resolution passed by the Conference of Western Attorneys General earlier this very month which unanimously asks the Federal Government to restore State control over this area to the States. Amongst the many States which signed this resolution, which joined in this resolution, are the States of Alaska, Arizona, Hawaii, Montana, New Mexico, North Dakota, and the State of Washington.

We urge the committee to allow the State to protect itself from organized crime in this area.

Senator DeConcini. Are you submitting that resolution for the record?

Mr. Corona. Yes, sir; it is contained in my testimony.

[The prepared statement of Mr. Corona follows. Testimony resumes on p. 149.]

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

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PREPARED STATEMENT

OF

RUDOLF CORONA, JR.

DEPUTY ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

An unprecedented threat to the security of California has been posed by the rapid escalation of unregulated Indian gambling operatins within its borders. In the past three years the number of California tribes involved in big-stakes gambling operations and the magnitude of those gaming operations has dramatically increased. Presently, twelve California tribes are conducting large-stakes unregulated gambling operations on their reservations and six more are in the process of starting such operations. These eighteen tribes encompass fourteen California counties, and because of the number of reservations and their locations in California, the tribes threaten to wrest the very control of gambling itself from this state. In fact, California has 117 Indian reservations located throughout the state and there are reservations located near every major population center of California.

Indian gambling in California stems directly from the decision rendered by the Ninth Circuit Court of Appeals in the case of the Barona Group of Capitan Grande Band of Mission

Indians v. John Duffy (9th Cir. 1982) 694 F.2d 1185. While that opinion granted the tribes the ability to conduct large-stakes unregulated bingo games, the tribes in California have not stopped at this form of gambling, but instead have involved themselves in classic casino-style forms of gambling ventures. In 1984 the Sycuan bingo parlor in San Diego County built an "upstairs lounge" and there offered games entitled "Bingo-Jack," "Do-It-Yourself Bingo" and "Horse Race Bingo." Investigation by this office in conjunction with the Sheriff of San Diego County revealed the games were actually illegal forms of blackjack, keno and an illicit form of lottery horse racing. Thus, in August of 1984 the Sycuan "upstairs lounge" was raided and $300,000 worth of illicit gambling devices, including blackjack tables purchased from Las Vegas, were seized. In March of 1985, a California criminal court determined that in fact the games offered in the "upstairs lounge" were the prohibited games of blackjack, keno and unlawful lottery horse racing.

This office has also seized materials announcing the tribes intentions to offer "bingo slot machines" and "bingo roulette." In fact, several California tribes have announced their intentions to offer slot machines in their bingo operations. Additionally, tribes in Southern California have attempted to contract for the installation of satellite telecommunications equipment for purposes of conducting off-track horse race betting. The continuing press by the tribes to involve themselves in any and all forms of gambling convinces us that the intention of the backers of unregulated Indian gambling is to create "free zones" throughout California which would completely override California's control of gambling.

This state does not concede the validity of the Ninth Circuit ruling on this issue. In fact, this state is currently before the Ninth Circuit in a case which will re-litigate the Barona finding. That litigation is the Cabazon and Morongo Band of Mission Indians v. County of Riverside and State of California (9th Cir. 84-6635). Our position in that case is that not only did the Ninth Circuit incorrectly decide the Barona case on the analysis it used, but more importantly, the court failed to employ the correct analysis which was recently re-enunciated in the United States Supreme Court case of Rice v. Rehner (1983) ____ U.S. ____, 77 L.Ed.2d 961. We believe the Ninth Circuit completely overlooked this state's vital law enforcement interests in the Barona case and we are diligently relitigating that issue. Briefing in the Morongo and Cabazon cases is complete and we hope to get a decision from the court by the end of this year.

The problems posed by unregulated Indian gambling are nationwide in scope. In fact, in excess of ninety tribes are conducting large-stakes unregulated gambling endeavors nationwide. Should review by the United States Supreme Court become necessary, we are confident that we will have substantial amicus support upon seeking review in that highest forum.

These gambling endeavors are extremely dangerous to the state's law enforcement interests. As the games are now run, the great majority of tribes in California are being victimized.

Although the stated purpose for the court's allowance of unregulated Indian gambling was to provide monies for Indian social service programs, to date few tribes have received any significant revenues for that purpose. Because the running of these gambling endeavors has been left entirely to individual contracts, unscrupulous non-Indian "management" firms have negotiated contracts which not only typically assure them fifty percent of the profits, but call for the tribe to return its profit percentage share to the management company as repayment of the debt for the construction of the gambling hall itself. The terms for such payback agreements and the obligation of the tribes to also pay unspecified "management fees," results in the tribes actually receiving no monies while the management companies enjoy huge profits from the outset of these ventures.

This state is now confronted with complaints by the tribes that the management companies have in fact taken over their tribes. Among other tribes, the Santa Ynez Reservation in Santa Barbara County and the Barona Reservation in San Diego County have complained that the management companies have integrally involved themselves in every aspect of the tribal government and have come to control them politically. Such manipulation of the political structure of the tribes by management companies we believe is inevitable. This is so because of the tribes government status they are largely shielded from civil suit by the federal law. Thus, management firms who have invested in particular tribes and who enjoy the millions of dollars taken in profit, realize the contracts they have framed are good only for as long as they enjoy the support and endorsement of the tribal government in power.

A striking example of this problem was played out by the Barona Reservation in San Diego County. At the beginning of this year the general Barona membership had not received any money from the gambling operation even though the operation had been successfully operated for more than two years. The Barona tribe had been sharply divided over the gambling issue and dissident members of the tribe mustered sufficient votes to force a recall of tribal Chairman Joe Welch. Very close in time to the taking of the recall vote, Mr. Welch and the management company decided to release the first per capita share of the profits to each voting tribal member. Allegations were made that tribal members were compelled to reveal their vote prior to being given their $3,000 payment. The United States attorney for the southern district of California is presently investigating those allegations and other allegations of wrongdoing in the Barona gambling operation. Although the recall election of Mr. Welch was close, he nevertheless was retained.

The Rincon Reservation in San Diego County also ran a large bingo hall and it failed amid great controversy on June 17, 1985. The collapse of the Rincon operation was swift and several prise winners and employees did not receive the money owed them by the bingo parlor. Indian tribal representatives deplored the failure of the operation assailing the claims of the non-Indian management company that insufficient funds existed to carry the operation on. A tribal representative contended that in its running over approximately one-and-a-half years the operation had made $9 million. Out of this, the tribal representatives asserted the tribe itself had earned only $10,000 to $15,000.

The greatest concern of this state over unregulated Indian gambling is the great threat these operations pose to the infiltration of ogranized crime influences. This state has definitively established organized crime links with some of the Indian gambling operations which are currently operating. The most dramatic example of organized crime involvement is that posed in the Cabazon tribal gambling operations. In an interview given to ABC which was aired on the television program 20/20 on April 4, 1985 non-Indian manager John Paul Nichols, Jr., admitted to his accepting a $50,000 from well-known organized crime associate Tommy Marson. Mr. Nichols also admitted that organized crime associate Irving "Slick" Shapiro and Rocco Zangari worked for him in the gambling operations. In fact, upon leaving the Nichols' employ, Mr. Zangari accused Nichols of systematically skimming monies from the gambling operations.

This committee should also be aware that the individual who has essentially run the 16-member Cabazon band since 1978 is John Phillip Nichols, Sr. Mr. Nichols earlier this year was arrested for the crimes of soliciting the murders of five people. Mr. Nichols has since been convicted of two of those charges and was sentenced to prison in California.

We urge this Committee's strong reconsideration of the testimony presented last year by the United States Department of Justice regarding H.R. 4566. As that position, presented by Deputy Attorney General Mark Richard makes emphatically clear, these unregulated Indian gambling endeavors are highly attractive to and draw organized crime. (Copy of that testimony is here attached as Exhibit A.) As Mr. Richard points out, the cash nature of these gambling operations bring with them the easy capability of laundering of funds and of the skimming of profits. In addition, as the United States Department of Justice report highlights, support services which facilitate the gambling operations, including security, food, liquor, janitorial, sanitation and similar services, can also become lucrative attractions to racketeers and those who would protect their grip on those services through violence and intimidation.

The attraction to organized crime of these operations is magnified by the governmental status of the tribes. This is so for while under Public Law 280 (18 U.S.C. § 1162, the State of California has complete authority to enforce all of its criminal laws on the reservations, the governmental status of the tribes preclude us from determining wrongdoing in the gaming operations. Thus, the autonomy retained by the tribes to run its own government has acted as a shield, preventing scrutiny and oversight of these operations by the authorities which would otherwise deter the commission of theft-related crimes. Thus, it cannot be reasonably contested that the unregulated nature of these operations has drawn organized crime to them and have made them susceptible to theft and other criminal acts. In fact, the Western states are united in their fear and condemnation of organized crime in this area and passed a unanimous resolution at their conference earlier this month urging the restoration of regulatory controls. (Copy attached as Exhibit B.)

Consideration of the Specific Provisions of S. 902

As was stated earlier, this state does not agree with the civil/criminal dichotomy analysis employed in the Barona and Seminole cases. We are diligently relitigating this issue before the Ninth Circuit and are fighting to have the correct principles applied in California which were enunciated in the case of Rice v. Rehner. We therefore oppose the codification in S. 902 of the incorrect civil/criminal dichotomy analysis.

This bill also fails to adequately address the state's major concern of this area; the unregulated nature of the gambling and the organized crime danger that it poses. This bill compels regulatory controls, however it places that obligation initially in the hands of the Department of the Interior. Again, as we have learned from the persuasive testimony of the United States Department of Justice, the Department of the Interior is entirely incapable of effectively carrying out these vital regulatory controls. (See Exhibit A.)

Even more dangerously, S. 902 allows the formation of "Regional Indian Gaming Commissions" which would entirely "subsume" the regulatory obligations vested in the Secretary of the Interior. As we have stated earlier, the great majority of tribes are dominated by the management companies with which they have contracted to carry on the gambling operations. Thus, it is highly likely that the interests and motivations of the consultant firms themselves, will come to control whatever "Regional Gaming Commissions" are formed. We believe this would result in the complete lack of regulatory controls in the area.

Moreover, as the United States Department of Justice earlier pointed out, neither the Department of the Interior nor the tribes have the expertise or facilities to adequately regulate these operations.

In conclusion, our studies have shown that unregulated Indian gambling has not profited the tribes. Non-Indian management firms have reaped nearly all the profits of these opeations and the gambling has bitterly split tribes amongst themselves. The unregulated nature of these games have already drawn organized crime to the reservations and those influences will continue to insinuate themselves on our reservations throughout the country. This condition threatens the safety of the states themselves, thus regulatory control by the states must be allowed. Finally, we have not seen any benefit to the health and cultural fibre condition threatens the safety of the states themselves, thus regulatory control by the states at a minimum, must be allowed. Finally, we have not seen any benefit to the health and cultural fibre of the tribes as a result of the vice of gambling allowed to them by federal court decisions.

EXHIBIT A

TESTIMONY BY MARK M. RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

before the

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES

JUNE 19, 1984

Mr. Chairman and Members of the Committee:

My name is Mark M. Richard. I am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

It is a pleasure for me to appear before this Committee to give the Department's position on H.R. 4566, the Indian Gambling Control Act.

This bill, which you have introduced Mr. Chairman, addresses an aspect of Indian affairs and law enforcement concern that has only recently assumed significance. That problem is the widespread development of major gambling operations on Indian reservations scattered throughout the United States. The Department of Interior has estimated that nearly 80 tribes are conducting gambling operations, chiefly bingo, and that 20 to 25 of these are "high stakes" operations, some grossing up to $1 million monthly. Some of these operations are tribally controlled and operated, others involve outside management companies, while still others are independently operated by individual Indian residents.

The sudden growth of these operations has generated concern in the law enforcement community. The Department has been made aware of the concerns of United States Attorneys, State Attorneys General and District Attorneys and other law enforcement officials. The basis of the concern is the attraction that all lucrative gambling operations will have for organized criminal elements. The large amounts of cash act as a magnet and a source of potential corruption. Let me mention also that our concerns at this time are oriented toward prevention of future problems and are based on our past experience going back several decades in dealing with organized crime.

Many states are now permitting gambling. Where stakes are high, the states have generally kept the operations in their own hands or subjected them to the control of powerful gaming commissions; where private parties (such as local charities) are allowed to operate gaming, there is generally strict licensing coupled with severe limitations on times of operations and prizes. In either case, state control hopefully fends off criminal influence by direct government operation or by minimizing the amount of cash in play. In the area of Indian gambling neither state nor federal law enforcement operates as an effective deterrent because of the complex network of reservation criminal law enforcement.

The attraction that high stakes gambling has for criminal elements should be readily apparent to this Committee. It involves a large number of fast moving cash transactions. The opportunities for "skimming" and "laundering" are enormous. Employees and managers can be corrupted into dishonest manipulations. Large-scale gambling operations require significant support services, such as security, food, cleaning, sanitation and transportation. Every one of these fringe operations can be lucrative and can attract racketeers who preserve their competitive edge by violence and intimidation. This has been the experience of legal gambling elsewhere. It has necessitated the creation of boards and commissions with pervasive supervisory authority, and even that has not always proved effective.

If Congress is going to put its stamp of approval on gambling activities, it should safeguard against crime and corruption.

From the point of view of criminal law jurisdiction there are two major types of reservation: Those in which jurisdiction over Indian residents is shared between the federal and tribal governments, and those where all or some jurisdiction is exercised by the state. Cf. 18 U.S.C. 1151 with 18 U.S.C. 1162 and 18 U.S.C. 3242. On the federal reservations, as on other federal enclaves, state law is often assimilated to fill the gaps in legislation. See 18 U.S.C. 13 and 1152. It had been held in non-gambling situations that on either type of reservation, only state criminal law was directly enforceable by the state or assimilated by federal law, and that certain "regulatory" measures of the state, though enforceable by criminal penalties, did not qualify as "criminal."

Within the very recent past, some Indian tribes have begun to use this exemption to carry on large-scale gambling operations free of all the licensing requirements and limitations and restrictions imposed generally by state law. The courts have uniformly supported the tribes except in those instances where the tribes engaged in operations that were completely forbidden by state law, and the prohibition was therefore deemed "criminal." Thus, blackjack will not be legal on a reservation if the only form of gambling allowed in the state is bingo. If legal bingo is allowed only upon a permit issued by the police chief to members of a church or charitable organization, and only for three-hour sessions to be held once a month with a $100 prize limit, the Indians may, in contrast, conduct operations 24 hours a day, daily, with $10,000 prizes and no permit. For example, the Cabazon Band in California, consisting of 25 members, has a hall that seats 700, open 7 nights a week. The Cherokee in North Carolina have had over 3000 players paying $108 a head at their twice a month sessions. The Lac Court Oreilles in Wisconsin charge a $200 entry fee for a chance at jackpots totaling $75,000 each night. The Pawnee of Oklahoma outgrew their 200-seat gym and have built an 800-seat establishment.

This bill, which you have introduced Mr. Chairman, would establish federal standards and regulations for gambling in Indian country. The Department endorses appropriately crafted standards and regulations for gambling activity. Although the Department has reservations about H.R. 4566, the bill suggests a framework for shielding such operations from infiltration by criminal elements, the danger that has caused the Department concern. The proposal also represents an attempt to achieve a compromise between Indian and local interests. It preserves some substantial measure of tribal authority, and recognizes that totally unregulated gambling raises legitimate law enforcement concerns to both the Indians and to persons living in areas surrounding reservations. Finally, the proposal will safeguard a significant source of tribal revenue. By stating a clear congressional policy in accord with those decisions legalizing high stakes gambling, the bill will serve to protect the tribes from the risk of adverse decisions in other courts of appeals or in the Supreme Court. *Cf*. *Rice* v. *Rehner*, ____ U.S. ____.

103 S. Ct. 3291 (1983) with, e.g., Barona Group of Mission Indians v. Duffy, 694 F.2d 1185 (9th Cir. 1982), cert. denied, ____ U.S. ____, 103 S. Ct. 2091 (1983).

We cannot fully endorse the bill as drafted. From a law enforcement perspective it does not go far enough. Our concerns are that the bill simply ~~does not provide for the degree of supervision and auditing to safeguard against "skimming," "laundering," kickbacks, manipulation and other criminal activity.~~ Although the tribes are recognized as governments, they do not have the authority or resources to police these types of activities. The 25-member Cabazon Band or the 106 member Sioux tribe at Prior Lake, near Minneapolis, cannot adequately deal with the influx of hundreds of players. Even larger tribes that could be said to be analogous to counties, do not have access to subpoena power or state criminal records that are just two of the many prerequisites to effective screening and auditing of a gambling operation. Indian courts do not have jurisdiction over non-Indians who commit offenses on reservations. Altercations, robberies, driving offenses and disorderly conduct will cause problems for local and federal authorities that they are not prepared to deal with.

It is the view of the Department of Justice that there are many problems related to having the Department of the Interior play the role of a supervisory gambling commission. To be reasonably effective as a deterrent to the infiltration of corrupt and criminal influences, a regulatory body functioning in the field of gambling must be well staffed with sophisticated auditors and investigators, have readily available compulsory process, be based on or near the center of the operations and have the power to establish and enforce regulations covering the entire gamut of matters associated with running a gambling operation. Even then, as we have repeatedly seen with respect to well regulated state operations, criminal infiltration still rears its ugly head. The Interior Department is in no position to assume the needed regulatory role, which in many respects would be inconsistent with its mission and function. An alternative mechanism for regulating gambling on Indian reservations must be devised.

While the Department has yet been unable to come up with a satisfactory alternate mechanism for dealing with Indian gambling, we hope, in conjunction with the Department of Interior, to do so in the near future. Beyond developing a satisfactory proposal on that regulatory mechanism, we would like to express some of our concerns with other provisions of H.R. 4566. I will deal with them in the order that they appear in the bill:

Definition of Indian country.

Section 4(3) defines "Indian country" as (a) reservations and (b) lands held by the United States in trust for a tribe or individual or land held by a tribe or individual with a restriction on alienation. This differs significantly from the standard and general definition in 18 U.S.C. § 1151 by omitting "dependent Indian communities". We surmize that the intent of the draftsman was to preclude legalization of gaming in those areas which, while sufficiently Indian in character to warrant federal criminal jurisdiction to the exclusion of the state, were not under tribal governance. We think this a correct decision. However, we are not certain why the same reasoning should not apply to the other buildings and lands in trust or under restriction, that are not within reservation boundaries, i.e., not in areas in which Indians reside under tribal governance.

Secondly, we fear that the discrepancy in definitions conceals a law enforcement gap, in that it does not specifically and clearly deal with gaming in the "dependent Indian communities" which are subject to exclusive federal criminal jurisdiction, but where there is no federal or assimilable state law making gaming a criminal offense because the state law is deemed merely regulatory.

Thirdly, since the Act apparently is intended to be all-inclusive, reaching not only federally controlled reservations but those in which criminal jurisdiction has been ceded to the States as well (see Section 5), it might be advisable to deal explicitly with those reservations (or areas consisting of allotments held in trust or under restriction on alienation) which were either state created or over which more jurisdiction was ceded to the state than was done under Pub. L. 280 and similar legislation. Examples would be some reservations in eastern states and allotments in the former Indian Territory which has become part of Oklahoma. While such specific treatment may not be necessary -- since Penobscot Nation v. Stilphen, ___ U.S. ___, 104 S. Ct. 323, 52 USLW 3330 (No. 83-336, Oct. 31, 1983), a recent Supreme Court decision, rejecting jurisdiction of a Maine Indian suit to restrain state enforcement of its gambling regulations for want of a substantial federal question, suggests that in such cases state regulatory law is applicable -- the will of Congress might best be spelled out rather than left to litigation.

Illegal gaming.

The proposal provides for punishment of unauthorized gaming by tribal as well as federal and state authority. Whether it is intended that tribal authority extend to non-Indian violators should be made clear rather than left to litigation. In Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), the Supreme Court held that in the absence of a declaration there was no jurisdiction, but section 5 is ambiguous.

We assume it is intended that entities such as an American Legion Post or Catholic Church obtain a permit even if most members are non-Indian. It might, however, be advisable to clarify to what extent the non-Indian residents of the reservation require tribal licensing to avoid litigation of the type in United States v. Mazurie, 419 U.S. 544 (1975).

It should also be made clear whether and to what extent tribal prosecution will bar subsequent federal or state prosecution for the same conduct. Cf. 18 U.S.C. § 1152, para. 2, cl. 2 (precluding successive prosecution), with Wheeler v. United States, 435 U.S. 313 (1978) (holding that successive prosecution is not barred by the Double Jeopardy Clause).

The provision for prosecution of illegal gaming by the states in those instances where jurisdiction has been assumed under special statutes is inadequate because it cites only two such Acts, Pub. L. 90-284 and Pu 83-280. There are others, e.g., Pub. L. 80-846 (Iowa), and 18 U.S.C. 3243 (Kansas).

Additionally and most significantly, is the failure of this key provision to provide punishment for gambling that it declares "illegal."

We have a number of other concerns in addition to these mentioned. For example, with respect to management contacts, it is not clear whether the only ground on which a contract may be disapproved is the presence of a convicted felon. Section 7(c). If this is the case, it is inadequate. A very substantial concern of the Department of Justice is the presence of front persons without felony convictions but linkage with organized crime. On the other hand, if it is contemplated that there are other bases on which the contract can be disapproved, they should be outlined or indicated in some fashion.

We are not certain that section 7(a) (ii) requires sufficient information for an adequate background check.

In conclusion, let me say that the Department views this bill as a very important beginning. The Departments of Justice and Interior have been working independently and with one another over a year to come up with a workable solution that would be generally agreeable to all concerned. Both Departments are in general agreement with the objectives of this bill, but both have their reservations and concerns which have not been allayed. I hope that I have conveyed to this Committee a sense of our deep concern lest this well-intended piece of legislation be enacted without necessary safeguards.

EXHIBIT B

CONFERENCE OF
WESTERN ATTORNEYS GENERAL
THE COUNCIL OF STATE GOVERNMENTS

720 SACRAMENTO STREET, SAN FRANCISCO, CALIFORNIA 94108 (415) 986-3760

APPROVED RESOLUTION NO. 85-1

INDIAN GAMING POLICY STATEMENT

(Introduced by Attorney General Brian McKay, Nevada)

WHEREAS, unregulated Indian gaming represents a threat to the public welfare of the nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gaming; and

WHEREAS, unregulated Indian gaming represents a threat to the welfare of the various Indian tribes because it may subject the tribes to the corrupting influences of organized crime; and

WHEREAS, the regulatory apparatus proposed by S902 and HR1920 are totally inadequate to address the problem of infiltration and control by organized crime of Indian gaming; and

WHEREAS, the states have traditionally regulated gaming and provide the best means of addressing the threats posed by unregulated Indian gaming;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Western Attorneys General urge President Reagan and the Interior and Justice Departments to support the states in their litigation in the Federal courts to assert jurisdiction over Indian gaming; and

BE IT FURTHER RESOLVED that the Conference of Western Attorneys General urge Congress to recognize that state and local jurisdiction over gaming on Indian reservations is essential to state sovereignty and should not be taken over by the Federal government.

(RESOLUTION APPROVED BY THE CONFERENCE AT ITS 1985 ANNUAL MEETING ON JUNE 7 IN JUNEAU, ALASKA)

AG14R85-1

Alaska • American Samoa • Arizona • California • Colorado • Guam • Hawaii • Idaho • Montana
Nevada • New Mexico • Northern Mariana Islands • North Dakota • Oregon • Utah • Washington • Wyoming

Senator DeConcini. Mr. Rumbolz?

STATEMENT OF MICHAEL D. RUMBOLZ, MEMBER, NEVADA STATE GAMING CONTROL BOARD, CARSON CITY, NV, ACCOMPANIED BY DAVID JOHNSON, CHIEF DEPUTY ATTORNEY GENERAL

Mr. Rumbolz. Yes, Senator. Thank you.

With me today is Chief Deputy Attorney General Dave Johnson from the State of Nevada. Dave is chief counsel to the gaming authorities in that State.

I am a member of the three-member State gaming control board, which is the State administrative agency given the responsibility to enforce the regulations and statutes in the State of Nevada regarding gaming.

I am also here today as a representative of the five-member Gaming Commission which sits as the ultimate licensing authority in our State and in a quasijudicial capacity for all of our disciplinary actions against licensees.

I would just like to briefly touch on three points that would have been raised in my prepared comments.

Senator DeConcini. Your full statement will appear in the record.

Mr. Rumbolz. I appreciate that, Senator. Thank you.

First is that Nevada is convinced that any time you have legal gaming or you have the oppportunity for illegal gaming to arise, you are going to find organized crime attempting to infiltrate it. It has been our history—Nevada has now had 50 years of legal gaming in its State. We've had 25 years of strictly controlled legal gaming in our State. It has been our experience that organized crime will continue to attempt to infiltrate regardless of the kind of statutory or regulatory scheme you put in place.

We have cases as recently as 1985 of indictments of organized crime members and their associates for attempts—either attempts or completed skims from our casinos in both Las Vegas and Reno.

This infiltration, though, is not limited merely to the proprietary interests as suggested in the Senator's bill. Infiltration can be managed by organized crime in a number of ways. They can come in as lenders to an organization, ultimately ending up with a significant influence over the direction and management of that organization. They can place key employees into the operation. One or two individuals can be sufficient to exert their will over a business. They can siphon money off of these businesses as a vendor or a supplier of services or properties, getting exorbitant fees far beyond the actual value of what they are providing. All of these can be used to keep someone in a hidden ownership position over a legal gaming operation.

As a result of those kinds of concerns, the Nevada scheme, which we believe truly is a comprehensive regulatory scheme, gives us the authority to call forward individuals in any of those positions and require that they undergo an exhaustive background investigation covering at a minimum a 20-year period of time into their background, their residences, their administrative problems if they have had any, their criminal problems if they have had any, their known associations and hopefully their unknown associations.

We send our agents to all corners of the world in conducting these background investigations. We not only believe it is necessary, we believe it is the only way that you can truly assure yourself that the individual standing in front of you is as clean as he presents himself to be.

Additionally, while we have that, we have then, of course, our hearings in front of the board and the commission where we interrogate the applicants. We go through their background, through the investigative report with them and discuss the problems or concerns that have been raised, having them under oath of course at all times, so that if we ever find a false statement on the record, we can immediately act to take that license away from the individual.

But then we have continuing regulatory response that helps us to insure that there's not further infiltration once these individuals are licensed. We require every major casino in the State of Nevada to undergo an intensive audit conducted by our audit division agents within every 2½ years of their operations.

Additionally, every year their external auditors, their outside auditors, must complete an entire audit and submit it to the State Gaming Control Board.

Additionally, we do surprise audits of operations. We have complete access not only to all records and documents kept by any licensee, but to all areas of their premises, including junket offices that might exist in Hong Kong or Mexico City. By statute, we are allowed complete access to those, and failure to give us access upon demand is grounds for revocation of a gaming license.

Additionally, we have a special investigations and intelligence division of the board whose agents are assigned full time to conduct incovert operations and gather intelligence regarding the possible infiltration of organized crime and also against organized cheating operations that would prey upon our license gaming industry in Nevada.

Our enforcement division acts as our policing agency, actually our cops on the street. if you will, or in our casinos trying to pick up slot cheaters, trying to find the embezzling employees that are in the operations.

Those three divisions—special investigations, enforcement, and audit—together combine to give us a continuing handle on what is going on in the licensee's establishments.

It is our belief that in order to properly control and regulate legal gaming it will require broad regulatory authority in whatever body this Congress or this Senate may choose to give this kind of power. It is going to require tremendous manpower, a tremendous amount of resources, and at least initially some expertise that will have to be drawn from the States.

There are going to be attendant costs to this, and those costs are going to include not just the cost of setting up the bureau or setting up the individuals that are going to actually handle your licensing or exercise your authority. There are going to be social costs attached to this as well. Those social costs will be for increased welfare costs for surrounding communities because it has been shown by many studies, one of which I have brought and will give to the committee after my comments—it is the Commission on the Review of the National Policy toward Gambling, "Gambling in America," from 1976, rather dated, but it was offered to the President of the United States and the then-Congress with the recommendation, I would note, at page 22 that the Commission recommend repealing 15 USC 1175, returning jurisdiction of tribal lands in terms of gambling laws to the States.

The last point I would like to touch on very briefly is the potential impact on this legislation in the State of Nevada. Tribal lands that have been discussed here earlier today have been in areas outside major metropolitan centers, say in Arizona, in New Mexico, in North Dakota. In Las Vegas, NV, we have Indian lands approximately one-quarter mile from our downtown casino area where we have some 14 or 15 major casino properties. Under the terms of this bill, as I understand them, Indian gaming in Nevada would allow full-scale casino gaming in Nevada because that is what the State allows in its regulatory system. That, to my mind, says that we may have an unregulated, or at least unregulated by the State, Indian casino competing with our downtown casinos in the heart of Las Vegas.

That casino will not have the attendant costs that a Nevada casino has. It will not be required to keep an internal control staff, to hire outside audit staff, to perform those internal control functions. It will not have to provide the legal representation necessary to appear in front of us. There are a host of costs that that casino would not have.

In addition, in Reno, NV, our major metropolitan area in Nevada, sits the MGM Grand Hotel, a some $100 million investment, hotel and casino. The land immediately adjacent to that is owned by an Indian tribe and could be used for the building of a hotel-casino to go into direct competition with.

We have a grave concern that there will be an economic impact on our existing gaming industry. We believe it will create an unfair competitive edge against our legal gaming industry, and we are also concerned that, by not being as comprehensive a regulatory scheme as we believe we have right now in existence in our State, it will be inviting organized crime back into the State of Nevada.

[Prepared statement of Michael D. Rumbolz follows. Testimony resumes on p. 166

PREPARED STATEMENT OF MICHAEL D. RUMBOLZ, MEMBER
STATE GAMING CONTROL BOARD OF NEVADA

My name is Michael D. Rumbolz. I am here as a member of the State Gaming Control Board of Nevada and am also here to testify on behalf of the other members and chairmen of both the State Gaming Control Board and the Nevada Gaming Commission. These are the two Nevada regulatory agencies that oversee and regulate our gaming industry.

Nevada has not yet experienced a large influx of Indian gaming. With the exception of a bingo parlor conducted on the Moapa Band of Paiute Indian Reservation located 65 miles from Las Vegas for a period of four weekends, there has been no unlicensed gaming on Indian lands in Nevada. Yet, Nevada shares the concern of state and local officials of other states that unregulated Indian gaming provides new opportunities for organized crime to gain a foothold in the states. Furthermore, if the logic of the Barona Group[1] and Seminole Tribe[2] cases were followed in Nevada, it could be argued that Indian tribes may be able to operate large-scale casino operations without any regulation by the State of Nevada. As such, we in Nevada fear that Indian gaming

REPRESENTS LITTLE MORE THAN CREATING AN EXEMPTION FROM OUR STATE POLICY OF STRICT GAMING CONTROL. THEREFORE, I WOULD LIKE TO STATE BEFORE THIS COMMITTEE THAT WE WHOLEHEARTEDLY SUPPORT THE INDIAN GAMING POLICY STATEMENT THAT WAS INTRODUCED BY NEVADA'S ATTORNEY GENERAL BRIAN MCKAY AND UNANIMOUSLY ADOPTED BY THE CONFERENCE OF WESTERN ATTORNEYS GENERAL AT THEIR ANNUAL MEETING THIS MONTH IN JUNEAU, ALASKA.

NEVADA'S VIEW OF THE INDIAN GAMING PROBLEM IS UNIQUE BECAUSE NEVADA HAS HAD LEGALIZED CASINO GAMING FOR OVER 50 YEARS. NEVADA'S HISTORY WITH LEGALIZED GAMING AND ITS REGULATORY APPARATUS FOR CONTROLLING LEGALIZED GAMING ARE OF GREAT VALUE FOR ANY GOVERNMENT OR SOCIETY THAT WANTS TO PROMOTE GAMING AS A TOOL FOR ECONOMIC DEVELOPMENT. MODERN CASINO GAMING WAS LEGALIZED IN NEVADA IN 1931 IN RESPONSE TO THE ECONOMIC DECLINE CAUSED BY THE GREAT DEPRESSION. FOR THE FIRST 15 YEARS OF ITS EXISTENCE, THE CASINOS WERE OPERATED ON A SMALL SCALE BY LOCAL OPERATORS OR PEOPLE WITH BACKGROUNDS IN THE CARNIVAL BUSINESS. STATE REGULATION OF THE CASINOS WAS NONEXISTENT. THEN IN 1946, BENJAMIN

("Bugsy") Siegal opened up the Flamingo Hotel on the road to Los Angeles that was to later become known as the Las Vegas Strip. He was the first of a long line of notorious hoodlums that would control or were rumored to control many of the hotels in Nevada over the next decade. The problem facing local and state officials was that it was almost impossible to determine who actually owned the hotels and casinos.[3] After a decade of violence and infiltration by organized crime, a bipartisan public policy of strict control of gaming by strong centralized state agencies was Nevada's response to unregulated gaming activity.[4] In 1959, the Nevada Legislature finally passed the comprehensive Nevada Gaming Control Act that provided the foundation for the strict control of casino gaming.[5]

The whole structure of gaming control in Nevada has been designed to attack the two main problems caused by the infiltration of organized crime into the hotels in the 1950's. These are hidden ownership of the hotels and the skimming of gaming revenue from the casinos to avoid proper accounting and payment of

TAXES. CONVICTION OF EITHER OF THESE ACTIVITIES UNDER NEVADA LAW IS A FELONY WITH POTENTIAL FINES AND IMPRISONMENT.[6] BUT BEYOND THE CRIMINAL JUSTICE PROCESS, THE STATE GAMING CONTROL BOARD AND THE NEVADA GAMING COMMISSION HAVE A REGULATORY APPARATUS IN PLACE TO ATTACK THESE TWO PROBLEMS. BEFORE ANY PERSON OR ENTITY IS LICENSED IN NEVADA, THE INVESTIGATIONS DIVISION OF THE STATE GAMING CONTROL BOARD CONDUCTS AN EXHAUSTIVE BACKGROUND INVESTIGATION OF THE APPLICANT'S ASSOCIATIONS, FINANCING, AND BUSINESS PROBITY IN GAMING.[7] AFTER THIS INVESTIGATION IS CONCLUDED, THE STATE GAMING CONTROL BOARD CONDUCTS A HEARING DURING WHICH IT INTERROGATES THE APPLICANT ABOUT ANY PROBLEM AREAS THAT ARISE IN THE BACKGROUND INVESTIGATION OR ANY OTHER MATTER. THE STATE GAMING CONTROL BOARD THEN VOTES TO RECOMMEND OR DENY THE APPLICATION FOR A GAMING LICENSE.[8] THE RECORD OF THIS HEARING, TOGTHER WITH THE INVESTIGATIVE REPORT, AND THE RECOMMENDATION OF THE STATE GAMING CONTROL BOARD IS THEN TRANSMITTED TO THE FIVE MEMBER NEVADA GAMING COMMISSION. THE COMMISSION THEN CONDUCTS ITS OWN SEPARATE HEARING DURING WHICH IT ALSO MAY INTERROGATE THE APPLICANT. THE

COMMISSION CAN THEN EITHER GRANT OR DENY THE APPLICANT A LICENSE.[9] HOWEVER, IT TAKES A UNANIMOUS VOTE OF APPROVAL BY THE COMMISSION TO OVERRIDE A RECOMMENDATION OF DENIAL OF A LICENSE BY THE STATE GAMING CONTROL BOARD.[10]

TO SOLVE THE PROBLEM ASSOCIATED WITH THE USE OF A "FRONT MAN" BY ORGANIZED CRIME INTERESTS, THE BOARD AND COMMISSION ARE ALSO AUTHORIZED TO CALL FORWARD ALL KEY EMPLOYEES OF A HOTEL AND CASINO WHO EXERT CONTROL OR HAVE A SIGNIFICANT INFLUENCE OVER THE GAMING OPERATIONS OF THE ESTABLISHMENT.[11] ONCE CALLED FORWARD FOR LICENSING, THESE INDIVIDUALS ARE SUBJECT TO THE SAME INTENSIVE INVESTIGATION AS APPLICANTS SEEKING A GAMING LICENSE.

ANOTHER CONCERN OF GAMING CONTROL AUTHORITIES IS THAT ORGANIZED CRIME MAY ATTEMPT TO GAIN CONTROL OF A HOTEL AND CASINO THROUGH RELATED SERVICE INDUSTRIES. TO ADDRESS THIS CONCERN THE NEVADA LEGISLATURE HAS GRANTED THE BOARD AND COMMISSION THE AUTHORITY TO CALL FORWARD ANY PERSON OR ENTITY THAT PROVIDES A SERVICE OR DOES BUSINESS WITH A GAMING ESTABLISHMENT FOR A FINDING OF SUITABILITY, TO BE ASSOCIATED WITH A GAMING ENTERPRISE.[12]

Again, once such a person or a business is called forward, the Board conducts a complete and intensive investigation of background, associations, and financing of that person or entity. The Board and Commission may then order that a hotel disassociate itself from a person or entity that it has found to be unsuitable to provide services to a licensee.

Nevada's strict control even extends to those who work in the industry as casino employees. All personnel who work in a casino are required to obtain a work card.[13] The Board has the power to object to the issuance of a work card if the person has a criminal record or some other problem in their background to make them unsuitable to work in the industry.[14]

To combat the problem of underreporting of gross revenue to avoid payment of license fees and taxes, a practice known as "skimming," the State Gaming Control Board is equipped with an Audit Division which conducts audits of gaming establishments on a regular basis. Additionally, every large gaming establishment must submit a system of internal controls that conforms to certain

GUIDELINES ESTABLISHED BY THE BOARD.[15] ONCE THE SYSTEM IS SUBMITTED THE LICENSEE MUST STRICTLY FOLLOW IT AND IS SUBJECTED BOTH TO REGULAR AND SURPRISE AUDITS BY THE AUDIT DIVISION OF THE BOARD. THE STATE GAMING CONTROL BOARD ALSO HAS A SPECIAL INVESTIGATIONS AND INTELLIGENCE DIVISION WHICH CONDUCTS COVERT OPERATIONS DESIGNED TO UNCOVER SKIMMING, HIDDEN OWNERSHIP, OR OTHER ACTIVITIES OF ORGANIZED CRIME WITHIN NEVADA'S GAMING INDUSTRY.

FROM NEVADA'S VIEWPOINT, THERE ARE THREE MAJOR PROBLEMS WITH S. 902 AS THE BILL IS CURRENTLY DRAFTED. FIRST, THE BILL GREATLY UNDERESTIMATES THE COMPLEXITY OF GAMING CONTROL AND THE TYPE OF REGULATORY APPARATUS THAT IS NEEDED FOR GAMING CONTROL. UNDER SECTION 6(B) OF S. 902, THE SECRETARY OF THE INTERIOR OR A REGIONAL INDIAN GAMING COMMISSION MUST DETERMINE THAT AN ORDINANCE PROVIDES AT A MINIMUM THAT THE INDIAN TRIBE HAVE THE SOLE PROPRIETARY INTEREST IN THE GAMING OPERATION, THAT NET REVENUES WILL BE USED TO BENEFIT THE TRIBE, THAT ANNUAL AUDITS OF THE GAMING OPERATIONS WILL BE PERFORMED, AND THAT NO OTHER PERSON OR ENTITY WILL HAVE A PROPRIETARY INTEREST IN THE GAMING OPERATION before the ordinance is approved. Section 6(c) of S. 902 provides an exemption from the requirements of 6(b) for ownership by persons and entities other than the tribe if the requirements for licensing are at least as restrictive as those of the surrounding state. However, no state licensing by a state agency is required. Under section 7 of S. 902, the Secretary of the Interior or a regional Indian Gaming Commission can approve management contracts for up to 49% of net revenues as long as certain minimal information is provided to the Secretary or the Commission on an application form and such person is not a member of the elected governing body of the tribe, been convicted of a felony or gaming related offense, provided false information, or failed to comply with the terms of the management contract or gaming ordinance.

We believe that these minimal application requirements, review authorization, and investigative powers granted to the Secretary of Interior or a regional Indian Gaming Commission under S. 902 are totally inadequate to address the problems of infiltration and control of gaming by organized crime as outlined

ABOVE. WE ARE CONCERNED THAT THE DEPARTMENT OF INTERIOR SIMPLY LACKS THE MANPOWER, EXPERTISE, AND FUNDING SUFFICIENT TO CARRY OUT ITS LIMITED RESPONSIBILITIES UNDER THIS BILL. WE ARE ALSO CONCERNED THAT THE BILL DOES NOT DEAL WITH THE HIDDEN OWNERSHIP AND SKIMMING PROBLEMS ASSOCIATED WITH LEGALIZED GAMING IN THAT THE BILL DOES NOT PROVIDE NOR REQUIRE THE INVESTIGATION OR REVIEW OF KEY EMPLOYEES, GENERAL GAMING EMPLOYEES, GAMING RELATED SERVICE INDUSTRIES, OR THE SOURCE OF FINANCING FOR THE GAMING OPERATIONS. IN SHORT, THE BILL ONLY PROVIDES "WINDOW DRESSING" CONTROL AND NOT ACTUAL CONTROL OVER GAMING OPERATIONS CONDUCTED ON TRIBAL LANDS.

THE SECOND PROBLEM WITH S. 902 IS THAT THE BILL ALLOWS GAMING TO BE CONDUCTED IN STATES WHICH DO NOT PROHIBIT GAMING AS A MATTER OF THEIR CRIMINAL LAW. THIS WOULD SEEM TO CODIFY THE CIVIL/REGULATORY VS. CRIMINAL/PROHIBITED DISTINCTION ADOPTED BY THE COURTS IN THE BARONA GROUP[16] AND SEMINOLE TRIBE[17] CASES. THIS DISTINCTION IGNORES STATES LIKE NEVADA WHICH HAVE PROHIBITED UNLICENSED GAMING AS PART OF A COMPREHENSIVE REGULATORY SCHEME DESIGNED TO STRICTLY CONTROL GAMING OPERATIONS AND TO IDENTIFY AND

RID GAMING OF THE PRESENCE OF ORGANIZED CRIME. WE DO NOT BELIEVE THAT THE CITIZENS OF NEVADA OR ANY OTHER STATE SHOULD HAVE THEIR LAWS CONTROLLING GAMING ACTIVITIES WITHIN STATES' BORDERS CIRCUMVENTED BY WELL-INTENTIONED BUT INEFFECTIVE FEDERAL REGULATION. WE BELIEVE THAT S. 902 WILL DO NOTHING MORE THAN ALLOW AN EXEMPTION FROM NEVADA'S TOUGH GAMING CONTROL LAWS TO PEOPLE WHO WOULD OTHERWISE BE UNSUITABLE TO HOLD A GAMING LICENSE IN OUR STATE.

IN ADDITION, THE "STATE STANDARD" TEST FOR LICENSING SUITABILITY CONTAINED IN THIS BILL AND TO BE APPLIED TO ENTITIES OR PERSONS WHO WANT TO HOLD A PROPRIETARY INTEREST IN A GAMING OPERATION ON INDIAN LANDS WOULD BE MEANINGLESS IN NEVADA. WE HAVE A COMPLEX LICENSING ADMINISTRATIVE PROCESS WHICH DOES NOT PROVIDE SPECIFIC DISCRETE STANDARDS FOR LICENSING BUT OPERATES WITHIN A WIDE RANGE OF DISCRETIONARY OR JUDGMENTAL FACTORS.[18] UNLESS THE APPLICANT FOR A PROPRIETARY INTEREST IN A GAMING OPERATION ON INDIAN LANDS IS ACTUALLY REQUIRED TO GO THROUGH OUR INVESTIGATIVE AND HEARING PROCESS, THE APPLICATION OF A "STATE STANDARDS" TEST TO SUCH PERSONS WOULD BE A NEARLY IMPOSSIBLE TASK.

In conclusion, Nevada is concerned that unregulated or loosely regulated gaming on Indian lands represents a severe threat to the public welfare of the nation. It will provide new havens for organized crime to operate in disregard of state laws concerning gaming activities. We believe that S. 902 does not solve this problem since it does not provide effective regulatory control or commit sufficient resources to combat the infiltration and control by organized crime at gaming operations conducted on Indian lands.[19] Gaming control is a matter best left to the states to deal with since they can develop their own methods of control to solve their own unique types of problems. Nevada's history and 50 years of experience with gaming and gaming control clearly indicates that ineffective or laissez-faire gaming control invariably leads to the infiltration and control of gaming by organized crime. Before this nation adopts or promotes gaming as a means of economic development for Native Americans, we had better make certain that we have the determination to pass the types of laws and commit the large amount of resources that will be necessary to insure proper strict control. Until such time, the federal government should grant jurisdiction to the states to exercise control over what has been and continues to be a local problem.

11-12

FOOTNOTES

1. *Barona Group of Capitan Grande Band v. Duffy*, 694 F.2d 1185 (9th Cir. 1982).

2. *Seminole Tribe v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020, 102 S. Ct. 1717, 72 L. Ed. 2d 1982 (1982).

3. Nevada historian Robert Laxalt described the problem as follows:

> In one way or another, most of the hotels were owned by the underworld, but there was no getting at the truth of who really owned what. With their highly developed antennae for anticipating trouble, bosses of crime syndicates were already resorting to the device of placing reasonably "clean" puppets out in front. These jovial dispensers of good will and donations to charity were the only names that appeared on license applications. In many cases, even the front men did not know who owned the hotels.

R. Laxalt, *Nevada, A Bicentennial History* 105-06 (1977).

4. For further history of organized crime in Nevada and the development of strict gaming control, *see* G. Ostrander, *Nevada: The Great Rotten Borough 1859-1974* 207-19 (1966); R. Elliot, *History of Nevada* 326-37 (1974); R. Laxalt, *Nevada, A Bicentennial History* 89-112 (1977); M. Glass, *Nevada's Turbulent '50's: Decade of Political and Economic Change* 24-38 (1981).

5. NRS 463.0129 describes the public policy of strict control as follows:

> 1. The legislature hereby finds, and declares to be the public policy of this state, that:
>
> (a) The gaming industry is vitally important to the economy of the state and the general welfare of the inhabitants.
>
> (b) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively and that gaming is free from criminal and corruptive elements.

> (c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gambling devices and equipment.
>
> (d) All establishments where gaming is conducted and where gambling devices are operated, and manufacturers, sellers and distributors of certain gambling devices and equipment must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the state, to foster the stability and success of gaming and to preserve the competitive economy and policies of free competition of the State of Nevada.

6. NRS 463.360.

7. NRS 463.1405, .170.

8. NRS 463.210, .220.

9. NRS 463.220.

10. NRS 463.220(4)(c).

11. NRS 463.165.

12. NRS 463.167.

13. NRS 463.335.

14. NRS 463.335(6).

15. NRS 463.157.

16. *Barona Group of Capitan Grande Band v. Duffy*, 694 F.2d 1185 (9th Cir. 1982).

17. *Seminole Tribe v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020, 102 S. Ct. 1717, 72 L. Ed. 2d 1982 (1982).

18. NRS 463.170.

19. Nevada's public policy or any society's public policy on legalized gaming is probably best stated by Associate Justice Charles M. Merrill in the famous case of *Nevada Tax Commission v. Hicks*, 73 Nev. 115, 119-20, 310 P.2d 852 (1957):

> We note that while gambling, duly licensed, is a lawful enterprise in Nevada, it is unlawful elsewhere in this country; that unlawfully followed elsewhere it tends there

to create as well as to attract a criminal element: that it is a pursuit which, unlawfully followed, is conducive of corruption: that the criminal and corruptive elements engaged in unlawful gambling, tend to organize and thus obtain widespread power and control over corruptive criminal enterprises throughout this country: that the existence of organized crime has long been recognized and has become a serious concern of the federal government as well as the governments of the several states.

Throughout this country, then, gambling has necessarily surrounded itself with an aura of crime and corruption. Those in management of this pursuit who have succeeded, have done so not only through a disregard of law, but, in a competitive world, through a superior talent for such disregard and for the corruption of those in public authority.

For gambling to take its place as a lawful enterprise in Nevada it is not enough that this state has named it lawful. We have but offered it the opportunity for lawful existence. The offer is a risky one, not only for the people of this state, but for the entire nation. Organized crime must not be given refuge here through the legitimatizing of one of its principal sources of income. Nevada gambling, if it is to succeed as a lawful enterprise, must be free from the criminal and corruptive taint acquired by gambling beyond our borders. If this is to be accomplished not only must the operation of gambling be carefully controlled, but the character and background of those who would engage in gambling in this state must be carefully scrutinized.

This court has already had occasion to note that the control and licensing of gambling is a duty demanding special knowledge and experience in matters of personnel, operation, and finance, as related to this type of enterprise. Dunn v. Nev. Tax Com., 67 Nev. 173, 216 P.2d 985. The risks to which the public is subjected by the legalizing of this otherwise unlawful activity are met solely by the manner in which licensing and control are carried out. The administrative responsibility is great.

Charles M. Merrill was appointed by President Eisenhower in 1959 as United States Circuit Judge for the Ninth Circuit Court of Appeals where he currently serves as a Senior Justice.

Senator **DeConcini**. Thank you very much.

Mr. Corbin, you've made a very convincing case to me. First, I want to thank you for your kindness in approaching this legislation. I know your strong feelings in this, and rightfully so with the involvement you've had with organized crime. I appreciate your constructiveness in your testimony today.

I'm also aware, as we have discussed, of the problems on some Indian reservations and your deep concern of violating criminal Arizona laws, and you said in your statement that you have no confidence in the Bureau because they have not responded, I guess, to your request that they do something. You have also indicated that you talked to the Justice Department, and I presume that includes the Attorney General himself or near the Attorney General——

Mr. **Corbin**. Himself.

Senator **DeConcini**. What response do you get from the Justice Department in your request to investigate and enforce Federal laws that do have jurisdiction with criminal activities that you believe are on the reservation?

Mr. **Corbin**. Senator DeConcini, the response I get from the Department of the Interior is included in the letters that we have posted and put in the back, which is in the record right now.

Senator **DeConcini**. What about the Justice Department?

Mr. **Corbin**. I thought we had included these copies, but apparently we had not.

Yes, I met with Mr. Meese, with Attorney General John Van de Kamp of California, here about 3 months ago. We are both members of the committee which meets with Justice Department with State problems periodically. We meet again in September.

I have also met with Victoria Toensing, who is head of one of the Justice Department's divisions. She came to New Mexico with a group of Justice Department people, which Paul Bardacke, the attorney general of New Mexico, and I were both present with our staff. Paul's problem in New Mexico, of course, is what Senator Domenici was talking about here earlier—that it is illegal to conduct dog racing in New Mexico and one of the tribes is opening up a dog racing parimutuel thing there, and he was very concerned about that. Of course, I expressed by concern for what was going on in Arizona.

They were going to take it back and discuss it with people, and I discussed it with Mr. Meese. At the present time—and this is the way it appears to me—it is a policy decision that is going to be made, and they are supposed to get together to determine what they are going to do about this.

Senator **DeConcini**. So no final decision has been made?

Mr. **Corbin**. No, sir. We are waiting. I have talked with Steve McNamel, who I think you know, sir——

Senator **DeConcini**. Yes.

Mr. **Corbin**. Who is now the—will be, I guess—the U.S. attorney for Arizona. Steve is ready to go. He is ready to take some action on what we believe would be violations of our State statutes. I have volunteered some of my people because they are very short-handed up there. So are we, but we are going to do it together. But until he gets authority, he cannot do anything.

Senator DECONCINI. Has the Justice Department instituted an investigation——

Mr. CORBIN. To my knowledge, they have done nothing.

Senator DECONCINI. They are only in the process of deciding policywise——

Mr. CORBIN. That is my understanding.

Senator DECONCINI. Whether or not they should investigate?

Mr. CORBIN. Senator, we have done the investigation already, my office. We know what is going on.

Senator DECONCINI. Yes, but do they have that information?

Mr. CORBIN. Yes, sir. We furnished it to them.

Senator DECONCINI. You furnished that to them?

Mr. CORBIN. Yes.

Senator DECONCINI. So they have the investigation material——

Mr. CORBIN. Yes, I've furnished that to them.

Senator DECONCINI [continuing]. And it is purely a policy decision——

Mr. CORBIN. Yes, sir.

Senator DECONCINI [continuing]. That you're waiting to hear?

Mr. CORBIN. That's correct.

Senator DECONCINI. Do you have any indication when that might come, Mr. Attorney General?

Mr. CORBIN. No, sir. Mr. Hodel is due out in Phoenix for our dinner Friday night. I've asked to have an hour with him to sit and talk to him. I don't know whether I am going to get it or not.

But that is where we are coming from, Senator: this law on the books right now, both the 1970 Organized Crime Act and the Assimilative Federal Crimes Act, on the books right now, which can be enforced, and they are not.

Senator DECONCINI. Well, I have the greatest respect for your involvement in combatting organized crime. I would lend my weight, for whatever it is worth—and I want the record to show so—to have the Justice Department review your investigation and pursue what they feel is proper. They are the deciding factor on the basis of criminality on Federal laws, but I would hope that they would——

Mr. CORBIN. Yes, sir.

Senator DECONCINI [continuing]. Look at your investigative report.

Thank you, Mr. Corbin.

Mr. CORBIN. Senator, may I offer that the U.S. attorneys at the various U.S. attorneys' offices have taken a rather inconsistent stand because 2 years ago the U.S. attorney in the State of Washington did proceed against the Lummi Tribe when they attempted to start a full-scale casino operation, Las Vegas style casino, in that State. They prevailed. They prevented it from being begun, and that, for all intents and purposes, is completed.

It also is very clear to us that the Department of Justice is on our side in this issue. However, the problem, of course, and the crunch comes in that the Department of the Interior has a diametrically opposed position to that of Justice. So it appears to be a policy position that——

Senator DECONCINI. I don't believe we've heard from the Department of Justice, have we, Mr. Taylor?

Mr. TAYLOR. No.

Senator DECONCINI. We have not heard what you've just said—that they are on your side or oppose the legislation or think it should be State regulated. I have not heard that, but we are going to—I am going to make that inquiry.

Mr. CORBIN. Yes, Senator.

Senator DECONCINI. Let me ask you something, Mr. Corona, while you are at the microphone there.

In California, I believe it is one of the States that Public Law 280 has been adopted and is effect; is that correct?

Mr. CORONA. Yes, sir.

Senator DECONCINI. Has the State ever prosecuted under that law the violations which you say can be found in a number of Indian gaming questions that you bring out?

Mr. CORONA. Yes. We must keep in mind that the gambling has been in California now 2 years as a result of the *Barona* decision, but in August of last year, in conjunction with my office and the district attorney's office and the sheriff's department, we raided the Sycuan Indian Bingo Palace. They had started an upstairs lounge, were conducting games they called "Bingojack," "Do-It-Yourself Bingo," and "Horse Race Bingo." Our evaluation was that it was merely a ruse. They had slapped the name "bingo" on games that were actually blackjack, keno, and an illegal lottery form of horse racing.

Senator DECONCINI. Did you prosecute them?

Mr. CORONA. We seized $300,000 worth of equipment, and we prosecuted and we won the case in the State criminal court. The matter is now on appeal, and we welcome the appeal because we need broader statewide authority to restrain the tribes to merely bingo until we can get that turned around.

I would also offer, Senator, that the tribes have made efforts to bring slot machines onto the reservations. We also found literature announcing bingo slot machines and bingo roulette. In addition, the tribes have attempted to install closed-circuit, offtrack horse racing equipment for purposes of satellite offtrack betting. We have to date prevented that.

Senator DECONCINI. Thank you.

Mr. Corbin, if I understood your testimony, in your judgment, Arizona's hands are tied for any prosecutorial action; is that correct?

Mr. CORBIN. Senator DeConcini, we do not have any 280 reservations in Arizona. There was one, the Pascua Yaquis, which the legislature never accepted the criminal jurisdiction. The Governor last year sent it back to the Indians.

Senator DECONCINI. From the State of Arizona's position, there is nothing that you or any law enforcement agency within the State can do if, in fact, there were illegal acts committed on the reservation; is that correct?

Mr. CORBIN. We have no jurisdiction whatsoever on the Indian reservations as to crimes committed by Indians.

Senator DECONCINI. I wanted to be sure that is on the record.

Thank you. I have no further questions.

Mr. Taylor, the staff director here, has some questions on behalf of the chairman.

Mr. TAYLOR [presiding]. Thank you, Senator.

Mr. Corona, I have a question on the Public Law 280 matter and the jurisdiction of the State of California also.

You indicated that you have exercised it once in the context of a raid on the Sycuan operation?

Mr. CORONA. Yes, sir.

Mr. TAYLOR. The result of that, I believe, was to close down the operation?

Mr. CORONA. We were very careful and precise in closing down only those portions which did not come within the protection of the *Barona* decision. Although we are relitigating that decision, obviously we must obey it until a different result obtains. So we just took out the upstairs lounge that was offering the illegal games.

Mr. TAYLOR. Well, you also indicated that some tribes had come to you seeking help or expressing concern with respect to the management companies and their involvement with them.

Under Public Law 280, it would appear that the State of California does have certain authorities to investigate these kinds of complaints and take prosecutorial action at the request of the tribe.

Mr. CORONA. Yes.

Mr. TAYLOR. Has any such activity taken place through your office in California?

Mr. CORONA. There are several ongoing investigations, some of which we are confident will result in the filing of charges. But the difficulties that we face are that normally the complaints come from dissident tribal members who are not in power, who do not have access or control of the accounting books or the intricacies of the operation, and their complaints are largely based on the fact that they see that they are not receiving any moneys from it and that no good is coming to the tribe from it. In addition, it has split tribes bitterly, family between family.

The investigations go slowly because, again, we have not the authority, in our view, viewing these activities, these businesses as government businesses of the tribe, as any governmental entity has a privilege to keep to itself its own records. Because of that, we are unable to compel them to show us the books.

Mr. TAYLOR. There are Federal statutes involving defrauding of Indian tribes or theft from Indian tribes. Have you attempted to invoke the assistance of the Justice Department in this?

Mr. CORONA. I have been working closely with the Justice Department. The problem we have encountered there is that the specific statutes deal with or involve the embezzlement of tribal moneys given to them by the Federal Government and do not specifically authorize oversight of gambling ventures or business ventures which are entirely run by the tribe without the assistance in any sense of the Federal Government.

Mr. TAYLOR. If my memory serves me right, I think the Federal statute, the Federal authority not only extends to Government funds, but to funds of Indian tribes generally?

Mr. CORONA. Yes, embezzlement of tribal funds. Through that avenue, in fact, the U.S. attorney has been looking at certain tribes, and, again, of course, the U.S. attorney, as we are, is constrained under the dictates of proper probable cause before we can obtain a search warrant. We are trying to get to that level but, until we can, obviously we are not able to obtain a search warrant which would allow us to get the evidence to move forward.

Mr. Taylor. Would it be correct to say, then, that there have been allegations of criminal behavior involved with or associated with Indian gaming activities; there have been initial investigations; but thus far there has not been any conviction or development of solid evidence that would lead to a conviction, showing that crime has in fact moved into these Indian gaming operations? Would that be a correct——

Mr. Corona. We have convictions—the conviction of the intrusion into illicit forms of gambling in the *Sycuan* case. We have ongoing——

Mr. Taylor. But that was violation of State law.

Mr. Corona. Yes.

Mr. Taylor. That was a tribal operation that was violating State law.

Mr. Corona. Yes. We are investigating presently thefts of gaming monies by management firms based on complaints from tribal members.

Mr. Taylor. I would like to ask a question, I think, of all three of you. The major concern that seems to be being expressed—and tribes themselves have expressed the same concern—is being sure that there is a control on the intrusion of criminal behavior or of criminals themselves into the Indian gaming operations.

I know that some tribes have had discussions with State agencies with respect to conducting background checks, investigations. What I would like to ask is, if this statute can be structured to address the concerns that you have with respect to control of this kind of criminal conduct, short of placing tribes under State law, would you then support legislation of this nature?

Mr. Rumbolz. If I might start on that, it would certainly depend on how short of falling under State law it would be. We are not in the business of hiring out our investigative abilities. We certainly would want to be reimbursed for any costs if we were, in fact, to go into doing background investigations, suitability investigations for licensing of operators on Indian lands.

Mr. Taylor. It is my understanding that an applicant for a license in the State of Nevada has to pay the State for the investigation.

Mr. Rumbolz. Absolutely correct. He not only pays for the cost of the investigation, but he pays for the investigators' time. We bill out our investigators' time—well, we are moving it up this month. In July we are moving it up to $30 an hour for each and every hour spent on an investigation, billed through to the applicant. Many of our background investigations cost in excess of $10,000 to the applicant.

But over and above that, there is staff time involved. We, of course, have clerical support. Our investigative summaries are rather lengthy at times. But we have some other concerns about conducting that on behalf of any other organization, even any other governmental agency. That is that we have confidentiality restrictions within our statutes as to whom we may give certain sensitive criminal record information, as an example. We are not allowed to hand out to the public at large, nor are we allowed to hand out to other State entities within Nevada, other agencies of the State of Nevada, a good deal of the information that we collect.

Mr. TAYLOR. What if the State of Texas put an inquiry into the State of Nevada asking for a background check on a particular person that was applying for a license in Texas? How would you handle that?

Mr. RUMBOLZ. Well, first of all, we probably would not do it on behalf of the State of Texas in terms of doing our background investigation. What we might provide would be provide the State of Texas with the names of the entities in Nevada that maintain our criminal records, maintain our scope and computer files, and our criminal history. We would not, without either subpoena or without some intergovernmental agreement, provide any confidential information to another State. In fact, the only governmental unit that we are allowed, at our discretion, to give confidential information to is an agency of the U.S. Government. So we routinely would deal with the Internal Revenue Service, the Treasury Department, the Federal Bureau of Investigation in sharing information, but we have other statutory restrictions that require us to walk a very thin line in whom we hand that information over to. That is a concern.

Mr. TAYLOR. If a tribe under this legislation was preparing to license, an applicant with a tribe, and they sent this person around to get a background check through your State agency, is there anything that would prevent you from advising the tribe that if this person had applied for a State license, he would be rejected?

Mr. RUMBOLZ. Yes. Our open meeting law would not allow that. We would be required to——

Mr. TAYLOR. So you couldn't even share the conclusion of your investigation; is that right?

Mr. RUMBOLZ. Well, the conclusion potentially we could share if we held a public hearing. Our board is a public agency. We must sit as a public body to make all decisions, especially decisions concerning suitability for licensing. So if we were to do a background investigation, potentially we could find a way to share the areas of concern we developed, and I am not sure—I am certain that the Attorney General's office could work on some way of sharing that through a series of agreements or immunities or whatever. If you get over that hurdle, as a board member, I could not tell you what—how I would vote on that person, whether I would allow them in our industry unless we were in a public meeting and actually voting on that individual.

Mr. TAYLOR. Attorney General Corbin, would the State of Arizona have the same problem?

Mr. CORBIN. My office would not. I can investigate whomever I wish.

In answer to your question, it would depend upon the volume. If there is a tremendous amount of people coming in and applying for a license and I just don't have the capabilities to do it, then we would have to make some arrangements about being paid for it, so I can hire some additional people—on the money from the people requesting it to be able to do that.

I am concerned right now, and I have some investigations going on right now of some of the people, to be perfectly frank with you, and I will share this with the tribes. I intend to do it. I told them here yesterday I would do it, if we find out anything detrimental, because they are part of my State. What affects them affects the State of Arizona. If I find out anything detrimental, sure, I am going to share it with them.

Mr. TAYLOR. Mr. Corona, would the State of California have the same——

Mr. CORONA. Yes. The California Penal Code specifically delineates what individuals may receive criminal intelligence and rap-sheet information. That material may be given to a sister State and law enforcement agency, but it may not be given to private citizens or organizations.

Mr. TAYLOR. If an Indian tribe were recognized to have the same standing as a sister State for purposes of receipt of this information——

Mr. CORONA. It would have to be specifically delineated. They are listed in the code section, and tribes are not considered a law enforcement entity. Therefore, we could not give that to them.

There has been a situation, however, where a tribe made an inquiry to me. They gave me a name asking me—stating that this individual was apparently going to buy into one of the bingo operations. They wanted to know if that individual was connected with organized crime. In that instance, I had a hit—he was a well-known associate of organized crime. That information, in essence, was public, and I was therefore able to give that information to them. That had been released in a commission report in 1968 by Attorney General Younger.

Mr. RUMBOLZ. Mr. Director, if I might just add one point to that—and I guess this would be my biggest concern for the State of Nevada, if something were constructed where the information were given over and we were doing the background checks. That is, if we were then to tell a tribe, no, this person is not suitable for a license and that person were then still allowed or continued by a tribe to be an operator, then we would have grave concerns. The potential for a conflict between us and the individual tribes is just heightened, I believe, by doing that.

Mr. CORBIN. I might add, too, that that is a problem. I would reiterate that. Once we give it to them, what they do with it is up to them. Of course, we may disagree with what they do with it.

Senator DECONCINI [reassumes chair]. Mr. Rumbolz, let me pose a hypothetical question to you. If there was a national Federal commission set up similar to the one that operates in your State, charging for the expense of the investigation, being able to have the advantage of your background information, and with the same regulatory authority over the Indian gambling, what would your response be to such a procedure or legislation? Would you feel that it was in the public interest, No. 1? What about the State of Nevada with particularly the two instances you point out of a problem?

Mr. RUMBOLZ. Let me say in this regard I will be speaking only for myself because I have not talked to the other members of the commission or the board.

In my view, that is probably the best way to control gaming on Indian lands—is to have a commission or, if you will, a supercommission and board set up similar to the scheme either in Nevada or New Jersey, and the kinds of regulations that have been promulgated in both of those States and the statutes promulgated in those States. I think it is not only in the public's best interest in terms of stopping the infiltration of organized crime into these operations and protecting the operations from embezzlers, outside cheats, and others, but it also is the best way to protect the gaming public, to make certain that they are, in fact, getting a fair deal when they walk into a gambling operation, regardless of whether it be located on Indian lands or in the State of Nevada or the State of New Jersey. I agree with that.

The second part of that, I'm not certain that in Nevada it would cause much of a problem. If, in fact, it were similar or sufficiently similar, that those two lands that I mentioned in Las Vegas and Reno potentially would have regulated casinos on them, merely a different regulatory body.

Senator DECONCINI. And there wasn't a competitive edge or some less regulation?

Mr. RUMBOLZ. Perhaps a little less regulation. The edge in that regard, though, I would think with a national or a Federal commission of that type, that they would at least look at the experience of Nevada and New Jersey. I would hope that we could convince them of the soundness of many of the approaches we have taken in regulating legal gaming.

If we were able to do that, I don't think there would be substantial differences. There might be subtle differences.

Senator DECONCINI. Thank you.

Gentlemen, thank you very much for your fine testimony.

I'm next going to call Mr. Richard Yetwin, attorney for C.A.H.K., Inc., of Miami, FL. I would like the record to show that Mr. Yetwin is a senior partner of the law firm of DeConcini, McDonald, Brammer, Yetwin & Lacy, of Tucson, AZ. I am not a member of that firm, although my family is.

Mr. Yetwin has discussed his clients with me as a courtesy only; that he was going to represent them. That is certainly his judgment, and I am pleased to have him here, as a distinguished lawyer from the State of Arizona, to present the views of his clients regarding proprietary agreements and business on the Indian reservations in Arizona.

Mr. Yetwin?

STATEMENT OF RICHARD M. YETWIN, LAW FIRM OF DeCONCINI, McDONALD, BRAMMER, YETWIN & LACY, REPRESENTING C.A.H.K., INC., ACCOMPANIED BY LAURANCE HURWITCH, PRESIDENT, C.A.H.K., INC., AND MARVIN ARONOFF, TREASURER, C.A.H.K., INC.

Mr. YETWIN. Thank you very much, Senator.

Senator DECONCINI. Would you care to introduce your clients, please?

Mr. YETWIN. Yes, I will.

To my right is the president of C.A.H.K., Mr. Laurance Hurwitch; to my left, the treasurer, Mr. Marvin Aronoff.

C.A.H.K. currently holds federally approved documents consisting of a land lease, a management contract, and a development agreement with the Gila River Indian Community. I am sure that you will be hearing from Governor Antone from the community and his counsel, Rod Lewis, in addition to our comments.

Pursuant to the development agreement, my client is obligated to construct a jai alai arena called a fronton, which will be approximately 120,000 square feet in size, and to convey the completed building to the community. It is anticipated that upon completion the fronton will employ approximately 450 people, 150 of whom will be tribal members pursuant to those approved documents.

The corporate officers and majority owners of my client are the two individuals that you have met here; in addition, Mr. Joe Cornblit, who is a world champion jai alai player, and Mr. Howard Kalik, who is the owner of an amateur jai alai fronton in Miami.

It is expected that the fronton will cost approximately $15 million and will seat 4,500 people. It will contain a restaurant and other standard types of amenities.

The jai alai games and parimutuel wagering will be regulated by the community pursuant to a tribal ordinance which was passed on April 3, 1985. Since there has been some discussion, pretty extensive discussion, concerning regulation, I have several copies of the tribe's ordinance here. I would certainly submit them for the record, but they are really for staff use.

Senator DECONCINI. We will accept a copy for the file.

Mr. YETWIN. Thank you.

Our point is certainly that not only are there very extensive regulations and contractual obligations which appear in the development agreement and the management contract and the lease, but also the tribe itself, which we view very much as a governing body, has imposed its ordinance on my client.

I would like to point out that the negotiations between my clients and the tribe went on for a period of approximately 2 years prior to the time that they received their federally approved documents.

When I talk about the tribe, my clients dealt directly with the Economic Development Committee of the tribe. They dealt directly and on a continuing basis with the executive director of the tribe and their house counsel, Rod Lewis, and ultimately went before the council several times prior to the time that they received approval.

Pursuant to the agreement the community and my client, the corporation will receive 10 percent of the total bets, which are called in the vernacular the handle, placed in the parimutuel wagering system, from which all expenses of operating the fronton, including the payment of employees, will come. My clients anticipate that if the fronton is successful, they should net $2 to $3 million per year to their corporation.

The community is to receive, in addition to a fairly healthy land lease payment, a gaming tax equal to 7 percent of the handle. In addition, they will receive 1 percent of the handle which will be placed in a social welfare and education fund controlled exclusively by the community. Further, 1 percent will be placed in a capital improvement fund. The balance of the proceeds from the wagers will be returned to the wagerers.

At the present time the State of Arizona receives net revenue on an annual basis in the approximate amount of $415,000 from bingo, $46 million from the State-run lottery, $4 million from parimutuel wagering on horses, and $7 million from parimutuel wagering on dogs. Those numbers are a little bit old, but they give you some idea. The total handle on horses and dogs alone for the fiscal years 1981-82 was approximately $213 million.

It is the position of both the community and C.A.H.K. that the case law now in existence, specifically in the ninth circuit, of which Arizona is a part, would permit parimutuel wagering on the community's reservation without the threat of State criminal prosecution or civil sanctions against non-Indians and Indians alike. I think that distinction is very important, particularly in light of some of the comments from several of the attorneys general. I think there is a distinction there and that perhaps non-Indians stand at substantial more risk than Indians in whatever they do on the reservation.

Gaming on reservations is allowed in those States which do not prohibit gambling but only regulate those activities pursuant to State or local law.

My client supports as vigorously as it can a Federal statutory scheme to assist in the regulation of Indian gaming. Any legislation passed by Congress, however, should not allow an individual State to control Indian gaming through the passage of State criminal statutes.

Under State laws which would appear on their face to be neutral, they could be intended to and, in fact, would destroy economic development on reservations which utilize gaming as a revenue source.

Further, such an approach would unduly and without reason infringe upon tribal sovereignty and prevent potential economic development on Indian lands.

With reference to your bill, the bill itself states that a tribe has an exclusive right to regulate gaming which is not prohibited by Federal law and which is conducted within a State where the gaming does not violate State law as a matter of public policy.

The public policy statement, as opposed to the House statement which has to do with criminal law, appears to us to be acceptable.

It is imperative that Federal legislation allow a tribe to argue to the Department of the Interior that any proposed activity is not against the public policy of the State in which the reservation is located and that a determination by Interior or another appropriate Federal agency be binding on the States concerning that issue.

Such an approach would both protect the State from activity outside the realm of what its people and policy recognize and allow and also protect the tribe from activities by the State which are truly designed to prevent tribal economic competition with State-sanctioned gambling.

In a sense, my client has no problem at all with a Federal determination being made concerning the State's public policy. The difficulty that we now have in Arizona is that we are forced to litigate the question with the attorney general in order really to protect our clients in the future concerning the issue of what is the public policy of the State of Arizona. You have to go to a Federal court, then to go in our case to the ninth circuit and potentially to the Supreme Court on that particular issue, when in fact the issue appears obvious to our side; I suppose it also appears obvious to Mr. Corbin. But the resolution of the issue concerning public policy in some situations could take so long that the developer, the person holding the federally approved documents, would have to back out for one reason or another. Either it takes too long or the financing goes away.

Senator DECONCINI. Mr. Yetwin, let me make sure I understand that. You say that your position, your client's position is that if there was a Federal agency or Federal decision determining what the public policy was, if that public policy so happens to jai alai was not in the best public interest, your clients would have no problem with that process?

Mr. YETWIN. That's correct. As a matter of fact, yesterday in the committee hearing for Congressman Udall's bill, I think that I summarized that issue, and perhaps this is a little bit broad brush, but in our situation casino gambling we think is clearly against public policy in the State of Arizona.

My advice, if my clients were sitting here wanting to open a casino, would be not really to attempt to do that on an Indian reservation. We do not feel that we are really pressing the limits of sovereignty or anything else. If, however, the reservation were located in Nevada or New Jersey, I think that our advice would be very similar to what it has been up to this point.

Once a determination is made by an entity removed from the State, removed from State government, we really have no problem with that.

Senator DECONCINI. Mr. Yetwin, if you will continue, I am going to have to go vote. We have a vote going on. Mr. Taylor will conduct the hearings here. I want to assure you your full statement will be in the record. Go ahead and summarize it. I am going to probably have to submit some questions for you because I am going to have to leave shortly.

Mr. YETWIN. Fine. Thank you.

Senator DECONCINI. Please continue.

Mr. YETWIN. As with the Gila River Indian community, a tribe which has contracted with a developer or management company would be entitled to both revenues from any ground lease or from any gaming tax which might be imposed pursuant to a tribal ordinance.

The State in which the reservation is located would obviously not be entitled to such a tax. To remedy the loss of tax revenue and/or the effect of competition, the State could, under the guise of passing a criminal statute which would prohibit in our case parimutuel jai alai, force the developer to either disregard development on any reservation near a large metropolitan city or to build a permitted gaming facility within the confines of the closest city and not on the reservation.

Tax revenues from the operation of any gaming facility would thereby be diverted from the tribe to the State in question. In our particular case, should my client be forced to operate in that fashion, we have estimated that the Gila River Indian Community would lose between $7 and $8 million per year in gaming tax revenue.

With reference to a couple of the sections of the statute itself or the proposed legislation, with reference to section 6(c) of the proposed bill, a distinction is drawn between the concept of similar gaming, which is in quotes, and the same activity which should be modified if the intent of the bill is to allow regulated Indian gaming.

The acceptable portion of section 6(c) states that,

> Licensing requirements and regulations governing such gaming shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State.

The sentence following, however, states,

> No individual or entity other than the tribe shall be eligible to receive a tribal license to own, operate, or conduct gaming activity on Indian reservations or on land subject to tribal jurisdiction if such individual or entity is not otherwise eligible to receive a State license to conduct the same activity

and I emphasize "same"—"within the jurisdiction of the State."

If the second sentence were to remain as currently drafted, certainly the State would argue that, if the same activity does not exist within a State, it is impossible to obtain a State license. Therefore, any proposed similar activity could not be allowed on the reservation even though such proposed activity would not be against the public policy of the State in question.

Section 7 of the bill, which is really the extensive safeguards, we feel a responsible management entity would not have any particular difficulty with. Not only would it then appear in the Federal legislation, in our particular case it appears in the Gila River's ordinance. It also appears in the documents which have been signed off on by Interior, and I would like to point out that attached to the approval which my clients did receive from Interior is a continuing obligation concerning all sorts of requirements to report, the main one being the transfer of any ownership or interest in the fronton to another entity—very standard, very much in line with the proposed bill. We have no problem with that. They are certainly reasonable regulations.

C.A.H.K. characterizes it current dispute with the State of Arizona as an economic one. In response and in the broadest possible fashion, the State's attorney general alleges that Indian gaming will produce another area for the intrusion of organized crime into our State. While my client recognizes the concern of our attorney general, such concern should not be used as a broad-brush excuse to prevent legitimate economic growth and development on the Gila River Indian Reservation.

In order to obtain federally approved leases, management agreements, and similar required documents—and I suppose that inherent in that statement is that we agree that there should be some type of an application and some type of approval. I understand that some of the testimony yesterday that we did not hear does not adopt that approach, but we don't have any problem with applying and paying a very substantial fee, certainly enough to cover the types of costs that have been described by the individual from

Nevada for any type of an extensive background check prior to the execution of the approved documents.

Further, it must be kept in mind that there is nothing which prevents the intrusion of organized crime into any reputable business. The newspapers and TV are full of articles and stories concerning infiltrations of what would otherwise be reputable businesses by known crime figures.

There is nothing which requires criminal intrusion into parimutuel jai alai being played on a reservation in Arizona any more than such an intrusion is required in the business of horseracing, dogracing, and the State lottery which are currently operating within the State.

It is the obligation of the appropriate prosecutorial authority to investigate and prosecute should such an intrusion occur. Since we have had the luxury of coming after attorneys general, I can only say that a proper scheme of investigation and enforcement, properly funded, shifts the burden very, very clearly to the prosecuting authority—in this case, we feel it would be some type of a Federal entity—to properly prosecute.

I think that to some degree there is a bit of a red herring when you get too involved in discussing how the prosecutorial system has faltered. It is simply a matter of giving the appropriate prosecutor the power, and we don't have any particular problem with that.

The implementation of an organized and reasonable plan to allow regulated gaming on Indian reservations will withdraw tax proceeds from certain States which have located within them Indian reservations lying near metropolitan areas. It is, in fact, the economics of that relationship which my client feels has promoted the organized crime smokescreen in our case and perhaps in others.

It is true that there are abuses of Indian gaming in the United States today. You have heard about them. They have been certainly very actively publicized in the press and on TV. It does not follow, however, that all properly regulated Indian gaming should be either directly prohibited by allowing the States to pass State laws or indirectly prohibited by a Federal statutory scheme, which as applied would really be placing the control of Indian gaming in the States.

Thank you very much.

[The prepared statement of Richard M. Yetwin follows:]

Prepared Statement of Richard M. Yetwin, Attorney, DeConcini, McDonald, Brammer, Yetwin & Lacy, P.C., Representing C.A.H.K., a Florida Based Corporation

Mr. Chairman and Members of the Committee: The Gila River Indian Community (the "Community") is located south of Phoenix, Arizona, and its reservation includes real property which lies along both sides of Interstate 10. The Bureau of Indian Affairs has given its approval to a 25-year lease, a management contract, and a development agreement entered into between the Community and C.A.H.K., Inc., a Florida corporation ("C.A.H.K."). Pursuant to the development agreement, C.A.H.K. is obligated to construct a jai alai arena (the "fronton"), which will be approximately 120,000 square feet in size, and to convey the completed building to the Community. It is anticipated that upon completion the fronton will employ approximately 450 people, 150 of whom, pursuant to the agreements, will be Community members.

The corporate officers and majority owners of C.A.H.K. are Joe Cornblit, a world champion jai alai player, Marvin Aronoff, an insurance broker, Laurance Hurwitch, a businessman, and Howard Kalik, an owner of an amateur jai alai fronton in Miami. The cost of the fronton is estimated to be approximately $15 million, and it is anticipated that it will seat 4,500 people. The fronton will also contain a restaurant and other amenities.

The federally approved lease and other agreements recognize that parimutuel wagering will be allowed within the fronton. It is anticipated that sporting enthusiasts from the Phoenix and Tucson areas, as well as all surrounding communities, will attend the jai alai contests. The jai alai games, and parimutuel wagering, will be regulated by the Community pursuant to its Tribal ordinance which was passed on April 3, 1985.

Pursuant to the agreements between the Community and C.A.H.K., the corporation will receive 10% of the total bets ("handle") placed in the parimutuel wagering system, from which all expenses of operating the fronton, including the payment of employees, shall be made. The Community is to receive, in addition to land lease payments pursuant to the lease agreement, a gaming tax equal to 7% of the handle. The Community will also receive an additional 1% of the handle which will be placed in a social welfare and educational fund controlled exclusively by the Community. Finally, an additional 1% of the handle is to be placed in a capital improvement fund. The balance of the proceeds from wagers made on the jai alai contests will be returned to the wagerers.

Both the Community and C.A.H.K. are currently involved in litigation in the federal district court in Phoenix, Arizona, wherein the Defendant is the Arizona Attorney General. Legal action was necessary in view of the Arizona Attorney General's expressed belief that the proposed jai alai activities were illegal under Arizona law and that Arizona law would be enforced as to C.A.H.K. with regard to these activities. Both injunctive and declaratory relief is requested in the lawsuit to clarify the rights of C.A.H.K. and the Community and to determine the applicability of Arizona law to parimutuel wagering activities occurring within the Gila River Indian Reservation.

At the present time, the State of Arizona receives net revenue in the approximate amount of $415,000 from bingo,[1] $46 million from the state-run lottery,[2] $4 million from parimutuel wagering on horses,[3] and $7 million from parimutuel wagering on dogs.[4] The total handle on horses and dogs alone for the fiscal year 1981-1982 was approximately $213 million.[5] It is the position of both the Community and C.A.H.K. that the case law now in existence, and specifically cases in the Ninth Circuit (of which Arizona is a part), would permit parimutuel wagering on the Community's Reservation without the threat of state criminal prosecution or civil sanctions against non-Indians and Indians alike. Gaming on reservations is allowed in those states which do not prohibit gaming, but only regulate those activities pursuant to state or local law.

COMMENTS RELATING TO THE PROPOSED LEGISLATION

C.A.H.K. supports a federal statutory scheme to assist in the regulation of Indian gaming. Any legislation passed by Congress, however, should not allow an individual state to control Indian gaming through the passage of state criminal statutes. Such state laws, which would appear on their face to be neutral, could be intended to, and in fact would, destroy economic development on reservations which utilize gaming as a revenue source. Further, such an approach would unduly and without reason infringe upon tribal sovereignty and would prevent potential economic development on Indian lands.

S-902 states that a Tribe has an exclusive right to regulate gaming activity which is not prohibited by federal law and which is conducted within a state where the gaming does not violate state law "as a matter of public policy." It is imperative that federal legislation allow a Tribe to argue to the Department of Interior that any proposed activity is not against the public policy of the state in which the reservation is located, and that a determination by Interior be binding on the states concerning that issue. Such an approach would both protect the state from activity outside the realm of what its people and policy recognize and allow, and also protect the Tribe from activities by the state designed to prevent tribal economic competition with state-sanctioned gambling.

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[1] Arizona Department of Revenue, Annual report, 1983-1984, p. 20.

[2] 1984 Arizona Lottery Report, June 30, 1984, Statement of Revenue.

[3] 33rd Annual Financial Report, Arizona Racing Commission, June 30, 1982, p. 14.

[4] 33rd Annual Financial Report, Arizona Racing Commission, June 30, 1982, p. 20.

[5] 33rd Annual Financial Report, Arizona Racing Commission, June 30, 1982, p. 13.

It is C.A.H.K.'s position in its pending federal case that gambling activities (specifically parimutuel wagering) are clearly not against the public policy of the State of Arizona. In Arizona at the current time, the state runs a traditional "numbers game" which is designated "the state lottery." The lottery realizes tens of millions of dollars per year for the state through $1.00 bets on tickets which are sold through numerous retail outlets, including smoke shops, grocery stores, and convenience stores. In addition, the state, as indicated earlier, obtains millions of dollars in revenue from parimutuel horse and dog racing. Indeed, the University of Arizona, which is owned and operated by the state, has within its Department of Agriculture one of the only courses of study in the country which teaches students how to operate dog and horse tracks and parimutuel wagering systems.

As with the Gila River Indian Community, a Tribe which has contracted with a developer/management company would be entitled to both revenues from any ground lease and any "gaming tax" that might be imposed pursuant to tribal ordinance. The state in which the reservation is located would obviously not be entitled to such a tax. To remedy the loss of tax revenue and/or the effect of competition, the state could, under the guise of passing a criminal statute which would prohibit (in our case) parimutuel jai alai, force a developer to either disregard development on any reservation near a large metropolitan city or to build a "permitted" gaming facility within the confines of the closest city, and not on the reservation. Tax revenues from operation of any gaming facility would thereby be diverted from the Tribe to the state in question. In our particular case, should C.A.H.K. be forced to operate in that fashion, it is estimated that the Gila River Indian community would lose between $7 and $8 million per year in gaming tax revenue.

As a matter of interest, the counsel selected by the State of Arizona to argue the State of Arizona's position in our pending matter in federal court is neither a criminal prosecutor nor a member of the civil division of the attorney general's office. Rather, he is the chief tax counsel representing the Department of Revenue for the State of Arizona. It is interesting that he has the "Indian law" expertise to be selected to argue what is actually a tax case, but what is promoted by Arizona's attorney general as an attempt to prevent criminal activity within the state.

With reference to Section 6(c) of the proposed bill, a distinction is drawn between the concept of "similar gaming" and "the same activity" which should be modified if the intent of the bill is to allow regulated Indian gaming. The acceptable portion of Section 6(c) states "that licensing requirements and regulations governing such gaming shall be at least as restrictive as those established by state law governing *similar* gaming within the jurisdiction of the state" (emphasis added). The sentence following, however, states "no individual or entity other than the Tribe shall be eligible to receive a tribal license to own, operate or conduct gaming activity on Indian reservations or on land subject to tribal jurisdiction if such individual or entity is not otherwise eligible to receive a state license to conduct the *same* activity within the jurisdiction of the state." If the second sentence were to remain as currently drafted, certainly the state would argue that if the "same activity" does not exist within the state, it is impossible to obtain a state license. Therefore, any proposed similar activity could not be allowed on the reservation, even though such proposed acitivity would not be against the public policy of the state in question.

Our Arizona fact pattern points to the importance of this provision. It is our legal posture in pending litigation that parimutuel wagering on jai alai is an activity similar to parimutuel wagering on horses and dogs, and that such activity does not violate Arizona's public policy. Because of this, under the existent federally approved documents which my client holds, and case law, C.A.H.K. would be authorized to "conduct gaming activity on Indian reservations" as agent for the Tribe.

As a final point, Section 7 of the bill recites certain controls on any reservation gaming. These controls are similar to those found in the approved documents which C.A.H.K. holds, and have been refined by the existent jai alai ordinance which was passed by the Gila River Indian Community. A responsible management entity should not have any particular difficulties complying with the federal statutory requirements as drafted in the proposed bill.

COMMENTS ON THE FACTS IN ARIZONA, AND THE NEED FOR UNIFORM FEDERAL RULES APPLYING TO INDIAN GAMING ON RESERVATIONS

C.A.H.K. characterizes its current dispute with the State of Arizona as an economic one. In response, and in the broadest possible fashion, the state's Attorney General alleges that Indian gaming will produce another area for the intrusion of organized crime into our state. While C.A.H.K. recognizes the concern of Arizona's Attorney General, such concern should not be used as a broadbrush excuse to prevent legitimate economic growth and development upon the Gila River Indian Reservation.

In order to obtain federal approved leases, management agreements and similar required documents, the entity requesting approval, as agent for a Tribe, goes through a process of close scrutiny. That investigation could be increased, if necessary, pursuant to a uniform federal plan. C.A.H.K. has no objection to such an approach.

Further, it must be kept in mind that there is nothing which prevents the intrusion of organized crime into *any* reputable business—the newspapers and T.V. are full of articles and stories concerning infiltrations of what would otherwise be reputable businesses by known crime figures. There is nothing which requires criminal intrusion into parimutuel jai alai being played on a reservation in Arizona, any more than such an intrusion is required in the business of horse racing, dog racing and the state lottery, which are currently operating within the state. It is the obligation of the appropriate prosecutorial authority to investigate and prosecute should such an intrusion occur.

The implementation of an organized and reasonable plan to allow regulated gaming on Indian reservations will withdraw tax proceeds from certain states which have located within them Indian reservations lying near metropolitan areas. It is, in fact, the economics of that relationship which C.A.H.K. feels has promoted the "organized crime smoke screen" in our case, and perhaps in others. It is true that abuses of Indian gaming exist in the United States today. It does not follow, however, that all properly regulated Indian gaming should be either directly prohibited, or indirectly prohibited by a federal statutory scheme which, as applied, would place the control of Indian gaming in the respective states.

Respectfully submitted this 26th day of June, 1985.

Mr. TAYLOR [reassumes chair]. Thank you.

We will call at this time the witnesses in panel 3: Donald Antone, Governor of Gila River Indian Community, accompanied by Rod Lewis, the tribal attorney; Roy Montoya, tribal administrator of Santa Ana Pueblo, accompanied by Alan L. Mintz of the firm of Van Ness, Feldman, Sutcliffe & Curtis.

Since we just concluded with the testimony involving the jai alai proposal at Gila River, maybe we should take it up at that point, Chairman Antone.

STATEMENT OF DONALD R. ANTONE, SR., GOVERNOR, GILA RIVER INDIAN COMMUNITY, SACATON, AZ, ACCOMPANIED BY ROD LEWIS, TRIBAL ATTORNEY

Mr. ANTONE. Thank you, Mr. Taylor.

My name is Don Antone. I'm the Governor of Gila River, AZ. My community has a strong interest in this bill, as we plan to conduct, as you heard, a jai alai operation which involves parimutuel wagering.

We have recently also filed an action against the attorney general of Arizona seeking an injunction preventing him from interfering in this economic development venture. If Federal legislation like S. 902 were in place, this litigation would not have been necessary.

It is important, however, to state at the beginning that we view our gaming operation as an economic development effort that is consistent with the President's policy of encouraging tribes to be economically self-sufficient.

Indian gaming enterprises are also viewed with favor by the Bureau of Indian Affairs as a means of generating revenues for tribes which often lack sufficient natural resources to develop needed governmental services efficiently to tribal members.

Gila River views its parimutuel operation as one part of its total economic development plan. Like other tribes, we think it important that the community encourage industry to locate on the reservation not only for revenue, but also to afford tribal members an opportunity for meaningful employment.

We believe there is a need for legislation which clearly establishes Federal standards for and control of gaming activities within Indian country. Such Federal legislation will indicate the limited roles that State government has in regulating Indian gaming activities on Indian reservations.

Any proposed legislation must be consistent with the general rule that State laws ordinarily do not extend to an Indian reservation, but it must be kept in mind that the cases to date have been litigated in States which have assumed or are being granted limited criminal and/or civil jurisdiction on Indian reservations pursuant to Public Law 280.

As you know, Arizona is not a Public Law 280 State, and, therefore, the jurisdictional situation is distinctly different. In short, the sovereign status of the tribe in Arizona is clearly being unaffected by the reach of Public Law 280.

In light of the clear jurisdictional status and based on existing case law, there is no doubt that Gila River may conduct parimutuel wagering on our reservation. The phrase "as a matter of criminal law" must be deleted from section 6(a) on page 4, line 16, because this phrase detracts from its conceptual clarity. The immediately preceding phrase "as a matter of public policy" is in more accord with the current state of the law.

We also agree that the revenue earned from tribal gaming activities should only fund tribal government operations, programs, and economic development activities as outlined in section 6(B)(2).

The community feels it is important that no individual member, tribal member, or a nontribal individual or other entity, have a proprietary interest in a tribal gaming operation.

We have great concern about the language and intent of 6(c) which governs licensing and regulation of individual tribal members, nontribal individuals, and other entities.

Further, there simply is no need for State regulations of an individual Indian or non-Indian who conducts and operates a gaming activity on an Indian reservation. At Gila River the tribe owns and operates the gaming activity and the building where the gaming activity will take place.

Furthermore, the Secretary of the Interior has approved contracts with non-Indian entities to manage our gaming activities and the tribe will license this management function. In this situation there is no justification for modifying the general rule that the State does not extend to and over the reservation.

Gila River strongly opposes any extension of State jurisdiction over an Indian reservation. Generally, tribal law should govern the licensing of an Indian or non-Indian involved in gaming activities on the reservation. There is no need for State regulation.

To refer to State law as a standard against which tribal law will be measured turns the current status of the law on its head. The additional requirement that a non-Indian entity and individual tribal members be eligible to receive a State license also is highly unusual. The intent of this provision appears to be an attempt to discourage non-Indian management groups from controlling Indian gaming, but this potential problem can be resolved in other ways.

For instance, the Regional Gaming Commission or the tribal gaming commissions will be able to control and monitor non-Indian management entities. In addition, Gila River intends to request that Federal criminal law enforcement authorities lend their support to us to avoid the influence of organized crime. We also intend to seek cooperation and aid of the State of Arizona.

S. 902 addresses the area of management contracts. We also think it important that Federal standards and guidelines be developed, not because tribes will fail to develop adequate safeguards. Development of Federal standards are necessary because our gaming efforts must be above reproach and unquestionable propriety.

We strongly support the proposed statutory requirements with respect to verification of accounting procedures and access to the Secretary of financial data as contained in section 7(b) and section 8. However, with regard to section 7(b), it appears that these sanctions are unnecessarily drastic. The intent of this subsection, though, obviously is to minimize the possibility of organized crime becoming involved in tribal gaming effort. No one disagrees with this policy.

It is important that a party to a management contract not have a felony conviction on his or her record or provide false or misleading information. However, once a gaming operation is in operation, the power of the Secretary to award a contract should be restricted. To interfere with the viable operation because a party was finally convicted of even a nongaming felony or a crime unrelated to the gaming operation gives too much power to the Secretary.

Undoubtedly, a felony conviction of a party to a contract should generate sanctions, but there must be less burdensome alternatives in place before a gaming operation is closed down.

Finally, in the area of gaming regulations, section 11 outlines and provides the Bureau of Indian Affairs with the power to establish regional Indian gaming commissions. Gila River by ordinance has established a gaming commission to regulate and monitor our contemplated jai alai parimutuel operation. We think it important that all parties to gaming operations on our reservation realize that they will be strictly regulated; that our gaming commission can impose heavy penalties. So we agree with the general concept of a gaming commission.

We thank you for the opportunity to express our view. We, our attorney and I, will be ready to answer any questions that you may have. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF DONALD R. ANTONE, SR., GOVERNOR OF THE GILA RIVER INDIAN COMMUNITY SACATON, ARIZONA

My name is Donald R. Antone, Sr., and I am the Governor of the Gila River Indian Community, Sacaton, Arizona. I appreciate this opportunity to express the position of the Community regarding S-902.

The Community has a strong interest in this bill because we plan to conduct a jai alai operation which involves pari-mutuel wagering on the Gila River Indian Reservation. We recently filed an action against the Attorney General of Arizona seeking an injunction preventing him from interfering in this economic development venture. If federal lesiglation like S-902 was in place, this litigation would not be necesary.

It is important to state at the beginning that we view our gaming operation as an economic development effort that is consistent with the President's policy of encouraging Tribes to be economically self-sufficient. Indian gaming enterprises also are viewed with favor by the Bureau of Indian Affairs as a means of generating revenue for Tribes, which often lack sufficient natural resources to deliver needed governmental services efficiently to Tribal members. Gila River views its pari-mutuel operation as one part of its total economic development plan. Like other Tribes, we think it important that the Community encourage industry to locate on the Gila River Indian Reservation not only for revenue but also to afford Tribal members an opportunity for meaningful employment.

I shall address my remarks to the following areas:

1. The need for federal legislation.
2. Application of state law to non-Tribal individuals or individual Tribal members.
3. Tribal Gaming Ordinances.
4. Management Contracts.
5. Regional Gaming Commissions.

We believe there is need for legislation which clearly establishes federal standards for and control of gaming activities within Indian Country. Such federal legislation should indicate the limited role that state governments have in regulating Indian gaming activities on Indian Reservations. Any proposed legislation must be consistent with the general rule that state laws ordinarily do not extend to and over Indian Reservations.

With regard to the application of state law on Indian Reservations, we support the policy set forth in the proposed Findings of Congress in Section 2(2) and in Section 6(a). Section 2(2) reads as follows: (2) Federal courts have held that Indian Tribes have the exclusive right to regulate gaming activity which is not prohibited by Federal law and which is conducted within a State which does not, *as a matter of public policy*, prohibit such gaming activity. [Emphasis Added]

But it must be kept in mind that the cases to date have been litigated in states which have assumed or been granted limited criminal and/or civil jurisdiction on Indian Reservations pursuant to P.L. 280. Arizona is not a P.L. 280 state and therefore the jurisdictional situation is distinctly different. In short, the sovereign status of Tribes in Arizona is clearer, being unaffected by the reach of P.L. 280.

In light of the clearer jurisdictional status and based on existing case law, there is no doubt that the Gila River Indian Community may conduct pari-mutuel wagering on our Reservation. The phrase "as a matter of criminal law" must be deleted from Section 6(a), on page 4, line 16, because this phrase detracts from its conceptual clarity. The immediately preceding phrase, "as a matter of public policy," is in more accord with the current state of the law.

With respect to the minimum requirements of a Tribal Ordinance regulating gaming activity on a Reservation I offer the following comments. The Community agrees with the policy contained in Section 6(b)(1) which reads as follows:

(1) the tribe itself will have the sole proprietary interest and will conduct any proposed gaming activity, except as provided in subsection (c); . . . .

We also agree that the revenues earned from Tribal gaming activities should only fund Tribal government operations, programs, and economic development activities as outlined in Section 6(b)(2). The Community feels it important that no individual Tribal member or a non-Tribal individual, or other entity, have a proprietary interest in a Tribal gaming operation which is in line with Section 6(b)(4).

We have great concern about the language and intent of 6(c) which governs licensing and regulation of individual Tribal members, non-Tribal individuals, and other entities. This provision states as follows; Provided, That licensing requirements and regulations governing such games shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State. No individual tribal member or non-tribal individual or entity shall be eligible to receive a tribal license to conduct gaming activity within a tribe's jurisdiction if such individual or entity is not otherwise eligible to receive a State license to conduct the same activities within the jurisdiction of the State.

There simply is no need for state regulation of an individual Indian or non-Indian who conducts and operate a gaming activity on an Indian Reservation. At Gila River the Tribe owns and operates the gaming activity, and the building where the gaming will take place. Furthermore, the Secretary of the Interior has approved contracts with a non-Indian entity to manage our gaming activity and the Tribe will license this management function. In this situation there is no justification for modifying the general rule that state law does not extend to and over Reservations.

Gila River strongly opposes any extension of state jurisdiction over an Indian Reservation. Generally, Tribal law should govern the licensing of an Indian or non-Indian involved in gaming activities on a Reservation. There is no need for state regulation.

To refer to state law as a standard against which Tribal law will be measured, turns the current status of the law on its head. The additional requirement that a non-Indian entity and individual Tribal members be eligible to receive a state license also is highly unusual. The intent of this provision appears to be an attempt to discourage non-Indian management groups from controlling Indian gaming. But this potential problem can be resolved in other ways. For instance, the Regional Gaming Commissions or Tribal Gaming Commissions will be able to control and monitor non-Indian management entities. In addition, Gila River intends to request that federal criminal law enforcement authorities lend their support to us to avoid the influence of organized crime. We also intend to seek the cooperation and aid of the State of Arizona.

S-902 addresses the area of management contracts. We also think it important that federal standards and guidelines be developed, but not because Tribes will fail to develop adequate safeguards. Development of federal standards is necessary because our gaming efforts must be above reproach and of unquestionable propriety.

Section 7(a) allows Tribes to enter into management contracts for a reasonable fee which shall not exceed 49 per centum of the net revenues of a gaming operation. This does not pose a problem for Gila River but it should be kept in mind that Tribes often do not have the necessary capital to start up extensive gaming operations. To unduly shackle a Tribe by discouraging off-Reservation investors does not make economic sense.

We strongly support the proposed statutory requirement with respect to verifiable accounting procedures and access of the Secretary to financial data as contained in Section 7(b) and Section 8. However, with regard to Section 7(d) it appears that the sanctions are unnecessarily drastic. The intent of the sub-section obviously is to minimize the possibility of organized crime becoming involved in Tribal gaming efforts. No one disagrees with this policy. The language reads: The Secretary or Commission shall not approve and may void any contract where he or the Commission has knowledge that any person listed pursuant to subparagraph (i) of this section is an elected member of the governing body of the Indian tribe which is a party to the management contract, has been or subsequently is convicted of any felony or gambling offense, has provided false or misleading statements or information to the Secretary of Commission pursuant to this section or the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act.

It is important that a party to a management contract not have a felony conviction on his or her record or provide false or misleading information. However, once a gaming operation is in operation the power of the Secretary to void a contract should be restricted. To interfere with a viable operation because a party was finally convicted of even a non-gaming felony or crime unrelated to the gaming operation gives too much power to the Secretary. Undoubtedly, a felony conviction of a party to a contract should generate sanctions, but there must be less onerous alternatives in place before a gaming operation is closed down.

Finally, the area of gaming regulation. Section 11 outlines and provides the Bureau of Indian Affairs with the power to establish Regional Indian Gaming Commissions. Gila River, by ordinance, has established a Gaming Commission to regulate and monitor our contemplated jai alai and pari-mutuel operation. We think it important that all parties to gaming operations on our Reservation realize that they will be strictly regulated and that the Gaming Commission can impose heavy penalties. So we agree with the general concept of a Gaming Commission.

The language should be amended to reaffirm the right of a Tribe to establish a Tribal Gaming Commission which exceeds similar state gaming regulatory agencies. The Bureau of Indian Affairs should be empowered to monitor and review actions of an Indian Gaming Commission, and recommend corrective action as necessary. It should be kept in mind that the Federal Government may still exercise its power to void a management contract.

I thank you for this opportunity to express the views of the Gila River Indian Community to S-902 and if there are any questions, I shall be glad to respond.

[A document dated March 1, 1985, and entitled "Gila River Indian Community, Sacaton, Arizona—Ordinance Governing Operation of Jai-Alai and Pari-Mutuel Wagering" was submitted for the record by Mr. Antone and is retained in the committee files.]

Mr. TAYLOR. Mr. Antone, I think before we pose any questions, we will hear from the other members of the panel.

I would like to say that Senator DeConcini intends to come back. He will probably be here for some questions.

Mr. ANTONE. Thank you.

Mr. TAYLOR. Mr. Montoya?

First, I would like to really urge you to summarize your statement. The statements you have provided will, in fact, appear in the record in their entirety. If you could just summarize, we would appreciate it.

STATEMENT OF ROY MONTOYA, TRIBAL ADMINISTRATOR, SANTA ANA PUEBLO, BERNALILLO, NM, ACCOMPANIED BY ALAN L. MINTZ, ATTORNEY, LAW FIRM OF VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

Mr. MONTOYA. I want to clarify for the record that I have with me Mr. Alan Mintz, who is an associate of Mr. Haltom, our special counsel.

I am Roy Montoya. I am tribal administrator for Santa Ana Pueblo. I apologize for the absence of the Governors, the officers of the Pueblo. They are back home engaged in tribal traditional practices.

Our position concerning proposed S. 902 is that we support in general the provisions contained in the bill with some changes. We have noted our proposed changes which we would like to enter into the record for the committee's consideration. The changes are on H.R. 1920, which is similar to S. 902.

We do not at the present time have any gaming or parimutuel wagering at Santa Ana, but we do have plans to construct a greyhound race track, which will be entirely owned by a nonprofit enterprise of the tribe.

The tribal council passed a racing ordinance as strict as that governing horse racing in the State of New Mexico in October 1984 to permit parimutuel wagering on greyhound racing.

The pueblo council has also established a five-member racing commission who will be responsible for regulating this activity.

The revenue generated from this project will be used by the nonprofit board of directors to provide social, educational, and other services to members of the tribe.

Legislation concerning gaming on Indian reservations will be very helpful to the tribes and also to Federal officials who are responsible for overseeing Indian affairs. Provisions of the legislation should stay within the framework of the present law as interpreted by the Federal courts. State governments should not be allowed to interfere in the conduct and regulation of tribal activities.

This principle of tribal self-government has been reaffirmed by the U.S. Supreme Court this year in the case of *Blackfeet* v. *Montana*.

There are those persons and organizations and States that would oppose gaming on Indian reservations who would take this legislative opportunity to attempt to prevent or eliminate competition from Indian tribes. In our Pueblo's case, the State of New Mexico conducts parimutuel horse racing through a contract at a State-owned race track 18 miles from our reservation. We contend that our race track will be an economic boon not only to our reservation, but to the surrounding non-Indian community. As evidence, we have attached resolutions of support from the cities of Rio Rancho, Corrales, and Bernalillo.

The economic boon will not only benefit the Santa Ana Pueblo, but also the State, and we have commissioned a study by Professor Alfred L. Parker of the University of New Mexico to take a look at what benefits the States would derive from our operation of the race track. We would also like to enter that into the record.

Mr. TAYLOR. We will make it a part of the record at this point.

Mr. MONTOYA. Yes. Thank you.

[The prepared statement and accompanying material submitted by Mr. Montoya follows. Testimony resumes on p. 247.]

SANTA ANA PUEBLO
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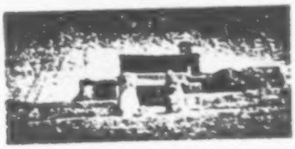

OFFICE OF THE:
Governor
Lt. Governor
Secretary

Phone: (505) 867-3301
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June 18, 1985

Senator Dennis DeConcini
Congressman Morris Udall
Congressman Bill Richardson
Congressman Norman Shumway
Capitol Hill
Washington, D.C. 20240

Re: S. 902, H.R. 1920 and H.R. 2404
Pending Legislation to Establish Federal Standards and Regulation on the Conduct of Gambling Activity on Indian Reservations and for Other Purposes.

Gentlemen:

On behalf of the Pueblo of Santa Ana, I want to take this opportunity to submit comments and recommendations on the above-referenced legislation pending before the House and the Senate. We appreciate the concern you have shown addressing this matter which has importance to Indian tribes, states and the general public throughout the United States. The Pueblo pledges its best efforts in working with the committees to enact appropriate legislation so that everyone involved will have the guidance necessary to proceed with participating in planned operations and in order that tribes may avail themselves of federal protection so that they are not unduly and improperly influenced.

INTRODUCTION AND SUMMARY OF THE PUEBLO OF SANTA ANA'S RECOMMENDATIONS

States throughout these United States, as well as Indian tribes, have incorporated various wagering activities as part of their legitimate governmental revenue raising programs along with the traditional areas of taxation. The Federal Government has always had a special relationship with the Indian peoples of these United States. In the context of that relationship, the United States has sought to foster tribal self-government, self-determination, and economic independence. The advent of various wagering activities on Indian reservations along with the Supreme Court's reaffirmation of the powers of Indian tribes to tax activities on Indian reservations constitutes the means for tribal economic independence - free from the continuing need for vast sums of federal aid. It is essential that the legislation currently being considered in the Congress of the United States for the purpose of regulating these wagering or gaming activities come from a perspective that will encourage the continued growth of the legitimate economic activities for tribes and, at the same time, provide the necessary assistance to Indian tribes so that such activities are routinely audited and continuously regulated by the Federal Government. While the states have a legitimate concern to insure that Indian reservations with gaming activities are free from organized crime and other undesireable elements - a concern which is shared by all Indian people - the control over the regulatory process must remain with the Federal Government and cannot reside in state governments for reasons which will be elaborated below.

We are submitting a draft bill that we can support, and that is fair. First, however, I want to address the underlying principles of tribal sovereignty, tribal self-determination, tribal economic independence and state or federal interference in tribal self-government. We believe in the President's stated policy on Indian affairs, and we see no reason why that policy should fail when it comes to Indian gambling or gambling on Indian reservations. We believe that the Congress was correct in enacting recent legislation which affords tribes the same treatment as states with respect to tax exempt obligations and other matters as contained in the Indian Governmental Tax Status Act of 1982. Congress has further implemented the policy of self-determination through the Indian Self-Determination Act, the Indian Finance Act, the Indian Mineral Development Act of 1982 and other such legislation.

We believe that the Supreme Court of the United States has correctly interpreted the status and sovereignty of Indian tribes in the recent decisions of Merrion v. Jicarilla Apache Tribe, ______ U.S. ______ (1982) and Kerr-McGee v. Navajo Tribe, ______ U.S. ______ (1985). The Supreme Court was also correct in holding that Indian tribes are not subject to state jurisdiction except as specifically provided by an act of Congress in numerous recent decisions including Montana v. Blackfeet Tribe, ______ U.S. ______ (June 3, 1985).

Our main goal is to assure that the sovereignty and the self-determination rights of the Pueblo of Santa Ana continue to exist without interference from the State of New Mexico or without Congress imposing state regulations and decision making on the Tribe. We also are against any regulation of one tribe by another or regulation of one tribal government by a committee of other Indian tribes. These are our reasons.

THE PUEBLO OF SANTA ANA - LOCATION, PEOPLE AND ECONOMY

The Pueblo of Santa Ana is located approximately 20 miles north of Albuquerque near the town of Bernalillo. The Pueblo of Santa Ana is in a depressed area economically as are the neighboring non-Indian towns of Bernalillo and Rio Rancho and the village of Corrales. Other nearby non-Indian communities, like

Bernalillo, and many state legislators publicly support the Pueblo in its effort. I refer you to the enclosed resolutions and letters of support. There are approximately 500 members of the Pueblo, many of whom are employed but many of whom seek better employment positions in jobs closer to home. The Pueblo has a 22% unemployment rate, very near the national unemployment rate during the Great Depression. More than two-thirds of the members reside in households with an income below the federally established poverty guidelines. There are not adequate jobs on the reservation for everyone who wants to work. The Pueblo is in serious need of housing, streets and sewers, medical and nursing care, day care programs and numerous other programs as set forth in the Statement of the Needs of the Tribe which is attached hereto for your reference.

SANTA ANA GREYHOUND PARK

The Pueblo of Santa Ana has established new laws and entities so as to permit pari-mutuel greyhound racing and the sale of liquor on the reservation. The proposed racetrack will be owned by a non-profit enterprise of the Pueblo, Santa Ana Non-Profit Enterprise (SANE). Greyhound racing and wagering on races will be regulated and controlled by the Santa Ana Racing Commission. The greyhound racetrack will be located in a master planned area at the intersection of Highway 44 and the Jemez Dam Road and will be operated by an operator-manager, Mr. Wayne Strong. SANE projects earnings in excess of $8,000,000 annually after payment for the capital improvements, all of which earnings must be spent for charitable, educational, religious or scientific purposes. All permits and licenses have been approved. The financing arrangements are being finalized; Mr. Strong is arranging such financing.

The Santa Ana Non-Profit Enterprise was established for the purpose of carrying on certain business affairs of the Pueblo as assigned from time to time by the Pueblo Council, with all net revenues from said venture to be used exclusively for charitable, religious, educational, and scientific purposes, to provide services to members of the Pueblo and to improve the economic conditions of the reservation. SANE has a Board of Directors consisting of nine members. The Chairman of the Enterprise Board is Mr. Mark Chino and the other members are as set forth in the resolution of the Council.

The Pueblo Council enacted the Santa Ana Racing Commission Ordinance for the purpose of authorizing and permitting animal racing, including greyhound racing, and pari-mutuel wagering on such races within the reservation boundaries. Pursuant to the Ordinance, the Governor has appointed five racing commissioners who have met and considered the application for a racing license by Santa Ana Non-Profit Enterprise as owner and Mr. Wayne Strong as manager of a proposed greyhound racetrack facility to be constructed on Pueblo trust lands at the intersection of Highway 44 and the Jemez Dam Road within the reservation boundaries. The Racing Commission approved the license applications. The commission is in the process of preparing Greyhound Racing and Pari-mutuel

Wagering Regulations. The Racing Ordinance provides civil penalties to be imposed by the Commission for non-compliance with the Ordinance and the penalty of expulsion from the reservation of non-members who are not in compliance; provides for licenses for all personnel at racetrack facilities; provides for independent monitoring and evaluation of the operation of racetrack facilities by the Commission and its employees; and gives the Commission authority to revoke or suspend licenses for non-compliance with the Ordinance.

SANE is proceeding with final arrangements on financing of the proposed greyhound racetrack facility at the proposed location and construction will begin soon. SANE intends to own the premier greyhound racing facility in the southwest, and with the assistance of its operator-manager, will have the expertise necessary to establish such a facility, to attract high grade animals for racing and have net revenues sufficient to fund the projects on the Pueblo projects list. This economic development activity is of utmost importance to the Pueblo of Santa Ana which so far has been unable to generate any substantial economic development. The construction of the racetrack facility at the proposed location is expected to generate other businesses and activities in the area including the possibility for lodging, service station, truck stop, manufacturing facilities, and an industrial park. The location is near the intersection of the main road to Rio Rancho, New Mexico, and the proposed regional private airport facility.

The Operator-Manager of the proposed ractrack facility will be Mr. Wayne Strong who has been involved in greyhound racing for the past 25 years. He personally owns more than 200 greyhounds, and has the capability of arranging all necessary financing, construction, and management of the facility. He has nominated architects familiar with construction of greyhound racetracks throughout the country who have visited the site and made preliminary findings. Mr. Strong has also nominated his proposed manager for the racetrack who has visited the location and is capable of managing any greyhound racetrack in the United States. Mr. Strong commissioned an independent market survey by Sandia Market Research of Albuquerque, New Mexico, which indicated a potentially large annual attendance at a 5,000 seat facility at the designated location. The projection strongly indicates public acceptance and usage of such a greyhound racetrack facility. From the operation SANE has projected, its gross revenues will exceed $9 million annually and once construction costs paid, its net will exceed $8 million annually which can be expended only for the charitable, religious, educational, and scientific purposes of SANE. None of the net proceeds are to be paid to any individual of the Pueblo. There are no stockholders and all members of the Pueblo are to benefit from the activities of SANE.

State regulation is not necessary for tribal activities. History tells us that Indian tribes are not helpless entities that must seek protection from the state governments. Tribal councils are, for the most part, comprised of highly intelligent individuals with good educational or historical backgrounds, who are responsible citizens and will see to it that the members of the tribes and the tribes themselves are not put in jeopardy. Of course, there are exceptions to every rule, but in considering what should be done on a nationwide basis, Congress must look to the norm of the Indian tribes and not to the exception.

APPROPRIATE FEDERAL OVERSIGHT

Large sums of money, both in private business and state government, have the regrettable attraction or temptation to attract persons who would corrupt or otherwise illegally control and manipulate such funds. The continuing governmental embarrassment, both at the state and the federal levels, of financial improprieties by governmental officials is but a warning that states, the federal government and Indian tribes must always be vigilant in protecting the public trust that each is charged with fulfilling. Legitimate private businesses such as the hotel and restaurant supply business, salvage business, and numerous others have also, regrettably, been the victims of various kinds of organized criminal activities. Gambling and other kinds of wagering on sporting events have also been an area of attraction to those who would corrupt the activities. It is, therefore, important that this legitimate concern be addressed in an appropriate manner in the legislation pending before this Congress. Neither the states nor the Federal Government have any particular expertise in insuring against illegal activities in government or in private business. The expressed concern that has previously been voiced in prior hearings before the House Committee on Interior and Insular Affairs regarding the dangers of the organized crime attraction to gaming activities in Indian country must be addressed with an appropriate solution. The Pueblo of Santa Ana intends to totally regulate and supervise any racing that takes place on the reservation.

The Pueblo of Santa Ana acknowledges the need for federal oversight of gaming activities on Indian reservations and has no objection to such oversight including approval of ordinances by the Secretary of the Interior. We agree that annual audits should be made as a matter of course and that the tribes should have access to the FBI and to law enforcement by the United States Attorney's Office. We further believe that the tribes should coordinate their law enforcement and fire protection efforts with the states and local authorities under joint powers agreements so as not to infringe on the tribe's sovereignty. The Pueblo has offered to fund such agreements with 1% of the racetrack handle - over $1,000,000 annually.

States should not, however, dictate to the tribes the extent to which gambling activities take place on the reservation. Nevertheless, we have no objection to the state making the decision as to the generic gambling activities that may be allowed. Of course, a state should not be able to change its laws to adversely affect or outlaw tribal activities that have already been authorized by the tribe. The tribes should be left to the regulation of their own activities without state interference or involvement because of the fundamental principles of sovereignty and self-determination. For example, if the state allows bingo, or in effect, generically similar games of chance, wagering on the activity and the variety of methods of such wagering must be left to the discretion of a tribe within such a state, and the tribe should be allowed to regulate such activity itself. In states where pari-mutuel wagering is allowed, likewise, the tribes should be allowed to have pari-mutuel wagering, regulating that wagering in a manner which is determined by the tribal council under ordinances which are approved by the Department of the Interior. There are those who would say that tribes cannot adequately and properly regulate such activities but that the states, on the other hand can regulate such activities. We believe that the tribe can do just as good a job, if not a better job, than the states in such regulation. Certainly some tribes will be better regulators than other tribes just as some states are better regulators than other states.

HOUSE BILL 2404

H.B. 2404 would unlawfully interfere with tribal sovereignty, tribal self-government and Indian self-determination and would probably violate the constitutional provisions of the Indian Commerce Clause by letting the states decide for the Indian tribes what type of gambling activities will be allowed on each Indian reservation. We find this bill totally contrary to the views stated by the President and held by the majority of Americans. Further, this bill is a radical departure from the constitutional and historical relationship between the states, Indian tribes and the United States. The founding fathers were very careful to insure that Indian commerce was kept free from state interference by reserving the plenary authority and power over Indian commerce to the Congress of the United States. It may well be an unlawful delegation of that power to allow the states to interfere with, not only Indian commerce in the form of gaming activities, but also tribal sovereignty in the form of governmental revenue raising and its control. None of the hearings held so far have indicated any good reason to allow the states to regulate tribal activities. The concern over the potential for organized crime's presence in Indian country is speculation, not the current reality. Even the Justice Department, in its testimony before the House Interior Committee last year, could not reference one incident of organized crime being involved in Indian bingo games. The Justice Department, nevertheless, raised the specter of such organized crime. However, when pressed, the spokesperson for the Department of Justice could not identify one single incidence of actual organized crime infiltrating into legitimate Indian gaming activities. The Commission on the Review of the National Policy Toward Gambling in its 1976 report made no finding of infiltration by organized crime in pari-mutuel wagering. It also made recommendations on disclosure of economic interests and security which we have followed.

In our view, the real reason that the states are opposed to Indian gambling is the fear of what is perceived as unfair competition by Indian tribes. In fact, it is unfair to preclude tribal activities. The states need not fear such competition in bingo games for all the state has to do is to raise its limits to allow competition with Indian bingo games. In the pari-mutuel wagering area, all the state has to do is to allow the same type of races that Indian tribes would allow so that non-Indians could compete off the reservations with the Indian tribes. The 1984 Annual Report of the New Mexico State Racing Commission indicates that the New Mexico State Fair Grounds retained over $2,000,000 in pari-mutuel revenues and the state received over $2,200,000 in taxes from six horserace tracks. In 1985, the state easily exceeded its 1984 revenues by allowing 30 plus spring race days (to be expanded to 67 days in 1986) at the State Fair Grounds and by allowing simulcast wagering. The daily spring racing handle was over $500,000 the first year. The state contract operates the spring racing under a 10 year contract with an additional 5 years having been requested. Originally, this contract also included greyhound racing, when allowed by the state. Therefore, the State of New Mexico is our competitor, and their input should be viewed as that of a competitor, fearing that the Pueblo will cut into their profits. Actually, we believe that the Santa Ana Track will not adversely effect the nearby horserace tracks because horses run during the day and greyhounds race at night with some matinees. Further, the track will have an extremely beneficial impact on the area and on the state. A study commissioned by the Pueblo shows additional tax revenues to the state of over $500,000 annually from the track. Over 500 jobs will be created - mainly for non-Indians.

There is an additional problem which we feel compelled to bring to the attention of the Congress regarding the suggestion that states should be allowed to control legitimate gaming activities on Indian reservations. First amendments to state laws should not be allowed to override existing tribal laws so as to outlaw what was previously legal. It is necessary to examine the potential consequences of such a scheme. Consider, if you will, that at this very moment most if not all of the major water rights cases are currently in litigation in the west. The importance of the outcome of the litigation and the possible settlements of these water disputes to Indian tribes and the western states cannot possibly be overstated. Without water, there is no existence for either the states or the Indian tribes. If a state were allowed to regulate and, in effect, control gaming activities on Indian reservations then the leverage which a state would have to exert its influence on an Indian tribe for a favorable resolution of a water dispute would be immense. This is bad enough, but there are other areas of potential abuse or overreaching.

It is not fanciful to consider that under such a scheme a state may allow an Indian tribe to build an expensive facility for a certain type of gaming activity and then suggest to such a tribe that unless it were to negotiate the resolution of a water dispute favorable to the state that the state would change the regulatory scheme and effectively put the tribe out of the particular gaming activity it was engaged in. The tribe would then not only be faced with the loss of the revenue generated by the gaming activity, but it might also be saddled with a facility not readily useful for other purposes, and the tribe might further be left with long term contractual obligations and perhaps long term debt as well. The very real problems that could arise in other areas if the states were allowed to control Indian gaming activities and therefore tribal revenue raising and tribal government are not fanciful but are rather very likely to occur. The states should not be put into this position of temptation nor should the tribes be put into such a position of subjugation.

SENATE BILL 902

Senate Bill 902 provides for limited sovereignty and self-determination. The bill would require an Indian tribe to place its ordinance before a committee of its peers and, in some cases, its competitors, who will decide whether or not the tribe should proceed. This is not right. Only the representative of the United States, as

Trustee, should have the authority to review ordinances of an Indian tribe. This Senate bill would only allow licensing by tribes to the extent that a license could be obtained by the state. This small clause in and of itself would put every Indian high-stakes bingo operation out of business since none of the operations could acquire a license from the state for such games and would effectively curtail any tribe entering into pari-mutuel wagering on a basis other than the activities regulated by the state. In the State of New Mexico, for example, pari-mutuel wagering is authorized at numerous horsetracks throughout the state, and two of the horsetracks are within 40 miles of the Santa Ana Indian Reservation. The state, however, would not license anyone for a pari-mutuel greyhound racetrack. Therefore, the Pueblo of Santa Ana would not be able to continue its plans for a greyhound racetrack since a license could not be obtained from the state. We submit that as long as a tribe does not have any greater or different gambling than that allowed by the state that the tribe should be able to regulate that activity in any manner it desires. What greater harm is there to the public to allow a person to place a wager on a dog race than on a horse race? What is there about horse racing that should allow it a preference over dog racing? Is there any legitimate reason to continue the monopoly of horse racing on the pari-mutuel market in New Mexico? The only concern that would be protected by this bill is the concern expressed by some state officials to protect the horce race industry from competition from Indian tribes. We submit that protecting a monopoly is not a legitimate protection that should be afforded business in a free enterprise system.

HOUSE BILL 1920

House Bill 1920 is the better reasoned approach to all the legislation that has been submitted. It would place responsibilities on the Secretary of the Interior to review tribal ordinances for gambling activities just as the Secretary has the responsibility for reviewing joint venture mining agreements with Indian tribes. Were the Melcher Bill to have given the states control over Indian oil and gas joint ventures, there would be no Indian oil and gas joint ventures. Congressman Udall's bill correctly preserves tribal sovereignty, tribal self-government and Indian self-determination. This bill is consistent with the principles that have previously been laid down by Congress, courts and this administration. The bill places proper control on gambling activities and requires annual audits. The only problem is that the bill is so worded that only tribes with a great deal of money would be able to enter into gambling activities. There is no relief for the tribe that does not have funds and therefore needs to raise outside capital through long-term management contracts or financing agreements. The tribes must be given the freedom necessary to exercise their tribal sovereignty and to improve their situations. With a few minor changes, the Santa Ana Pueblo would be able to support the bill submitted by Congressman Udall. These changes are reflected in the draft bill included with this testimony.

We appreciate the opportunity to express our views on this matter on behalf of the Pueblo of Santa Ana and will be happy to supply any additional information that the committee or any of the congressmen or senators would desire.

Very truly yours,

Roy Montoya

Governor Eliseo Raton, Sr.

Long Range Community Needs and Goals

INTRODUCTION

Santa Ana Pueblo is located along the Jemez and Rio Grande Rivers in southeastern Sandoval County New Mexico about 16 miles north of Albuquerque. The eastern portion of the reservation is bisected north to south by Interstate Highway 25. A larger portion of tribal land extends to the west and north along the Jemez River along New Mexico Highway 44. Pueblo lands encompass over 61,000 acres or more than 70 square miles of original land grants, trust lands and lands purchased by the tribe.

The tribal enrollment is 552 persons. There are approximately 566 persons living at the Pueblo of whom 6% or 35 individuals are non-tribal members. Of the total enrolled population 274 are male and 278 are female. Of the tribal members, 96% are in residence at the Pueblo and 21 or 4% do not reside at Santa Ana. There was a tremendous population increase between 1950 and 1970 at Santa Ana, leveling off substantially since then. In that 20 year period, the population rate of increase was 56%. The average increase since 1970 has been less than 1.5% per year. Given this base, population projections suggest population at Santa Ana will reach 580 by 1985, 686 by 1995 and 739 by the year 2000. The potential labor force at Santa Ana is 211 individuals, 65% of whom are female and 40% of whom are male. Of this number, current statistics indicate that approximately 165 are presently employed and 40 actively seeking work.

The people of Santa Ana have lived at their present location, including the ancient village of Ta-Ma-Ya, since approximately 1700, dating to the Spanish reconquest of New Mexico. The original U.S. land grant for Santa Ana's comparitively small population has experienced relatively few economic changes over the past 30 years, except that they are increasingly dependent on the dominant society outside reservation borders.

The Santa Ana economy is stable but lacking in growth - but not necessarily growth potential. Most Pueblo residents are employed either off the reservation in nearby Bernalillo and Albuquerque, engage in subsistence farming, or make do on various government supplemental income programs. There is very little commercial activity presently going on at the Pueblo and no industrial enterprises operating with benefits to the Pueblo or its residents. The primary economic activity is agriculture; farming and ranching.

Pressure for economic growth from the continuous expansion of the town of Bernalillo and, to the south, the encroachment of Albuquerque's urban sprawl serves to intensify pressures upon the tribe to exercise its potential development options. Formidable tasks face Santa Ana in any attempt to initiate economic development. Foremost among them is the economically depressed area surrounding the reservation which until very recently has not experienced substantial economic activity beyond traditional agricultural ventures. Access to investment capital is missing at the Pueblo, and this is a serious deterent to implementing development options once they are planned. Further hindering development is a comparative lack of managerial experience to provide the tribe with necessary expertise to pursue private enterprises and to secure funding for proposed projects.

Finally, due to a traditional agricultural and small crafts economic orientation among Pueblo members, job skills are lacking in the potential labor force for businesses that might consider locating on Santa Ana land.

Challanges affecting possible economic development are both internal and external. External factors such as the Pueblo's comparative isolation from the Albuquerque urban area discourages industry from locating a facility at Santa Ana because of the lack of amenities and infrastructure. Ironically, a second external challange is the continuing rapid growth of the Albuquerque/Bernalillo area in the sense of the pressure placed on the tribe for rapid, unplanned development, and of the encroachment of surrounding development. The tribe must take great care to ensure that decisions are made following appropriate planning and administrative procedures that will decrease the likelihood of social and cultural conflicts with non-Indians while persuing reasonable economic returns from developmental opportunities.

Among the internal factors affecting development at Santa Ana are restrictions having to do with the social and cultural heritage of the Santa Ana people. Santa Ana has a strong feeling for its land and a responsibility to honor and protect the land upon which they and their ancestors have lived for so long. This responsibility must be recognized and any development strategies must be sensitive to these needs. In addition, a sense of true community participation in whatever development decisions the Pueblo undertakes is an aspect which must be included in any plan. This in itself is dependent on the Pueblo having a firm sense of recognition of its own self-identity as a viable culture so that there can be a shared sense of purpose and direction among the people of Santa Ana as they realize their potential.

GOALS STATEMENT

The goals of Santa Ana Pueblo are documented in the Santa Ana Comprehensive Plan adopted by the Tribal Council in 1980:

1) Establish an effective and efficient Tribal administration, management system, and planning office,

2) Improve the effectiveness of a fair and continuous Tribal law enforcement program,

3) Provide adequate social services for all age groups,

4) Provide a range of adequate community facilities for all age groups and needs in the Pueblo,

5) Provide reliable, high quality and cost effective utility systems to support existing and future community development,

6) Maximize the benefits derived from our fertile, arable lands to define the role agriculture will play for the future well being of Santa Ana Pueblo,

7) Develop and implement a land use plan to make the best use of land and other natural resources for both short and long term while preserving the traditional life style of Santa Ana,

8) Promote economic growth to provide jobs to residents and to provide Tribal government income leading to Tribal self-sufficiency, and

9) Strengthen the awareness of our cultural heritage and maintain its identity in the future.

In order to meet these goal the Tribe has set the following specific objectives:

Tribal Administration
- * increase staff to provide the kind of services available from states and counties such a fire and police protection,
- * departmentalize staff into areas such as health and social services, education, maintenance, planning, etc,
- * provide training to all staff in their areas of responsibility.

Education
- * full scholarships for all students serious about their education.

- Head Start and kindergarten programs with professional staff and adequate equipment to prepare children to succeed in public schools,
- tutoring for Junior and Senior high school students with enrichment programs to give them exposure to the outside world,
- career counseling,
- a tribally operateds elementary school with year round programs,
- education in tribal language and traditions making use of the skills and knowledge of the elderly.

Health and Social Services

- an expanded health care clinic that will include dental and mental health services,
- home health care for the elderly, or nursing care for those who need it,
- transportation to health care facilities for those in need,
- health education,
- a drug and alcohol abuse program with an overnight treatment/detention facility,
- a temporary foster home for children affected by neglect or family difficulties,
- family counseling and parenting education.

Other Tribal Needs

- support for traditional religious activities,
- expand recreational opportunities possibly including playgrounds, skating rinks, tennis courts, etc.,
- expand the economic base through commercial development of tribal land,
- re-establish agriculture as a viable way of life for tribal members,
- construction of roads and other infrastructure for establishing additional residential areas thereby preserving tribal farm lands.

This list is by no means the final word in what Santa Ana would like to do to meet present needs, but these objectives do reflect some of the past thinking of the Tribe on what the most pressing needs are and how they might be met.

DENNIS C. CHAVEZ
SANDOVAL & BERNALILLO
Home Address
3016 ST. ANDREWS
RIO RANCHO, NEW MEXICO 87124
Home Telephone
892 9470
Business Telephone
867 2371

[illegible]
PUBLIC AFFAIRS
RULES

New Mexico State Senate
Santa Fe

March 11, 1985

Mr. John W. Fritz
Deputy Assistant Secretary
Bureau of Indian Affairs
1951 Constitution Avenue, NW
Room 4116-N
Washington, D. C. 20245

Dear Mr. Fritz:

I would like to ascertain the status of the "Request for Approval of Ordinances and Other Related Documents Relating to Economic Development" submitted to your office by the Pueblo of Santa Ana on November 24, 1984. I am sure you are aware that these documents, if aproved by your Bureau, would essentially establish a dog track on Santa Ana Pueblo land.

As a New Mexico State Senator representing a district which includes the City of Rio Rancho, Village of Corrales and the Town of Bernalillo, I am greatly concerned with the economic well-being of these communities. The proposed Santa Ana Dog Track would not only benefit the Pueblo, which is northeast of and adjacent to my district, but also the non-Indian communities that I represent as well. The dog track would certainly have a beneficial impact on the economic growth potential for the entire area.

In conclusion, I would like to reaffirm my support for the dog track proposal submitted by the Pueblo of Santa Ana.

Thank you for your consideration, and I look forward to your response.

Sincerely,

Dennis C. Chavez

Dennis Chavez
State Senator

DCC/jmt

cc: Governor Eliseo Raton, Sr
Pueblo of Santa Ana

Mr. Roy Montoya, TA
Santa Ana Pueblo

STEPHEN D. STODDARD
R-LOS ALAMOS & SANDOVAL-23
Home Address:
310 KIMBERLY LANE
LOS ALAMOS, NEW MEXICO 87544
Home Telephone
672 9001

New Mexico State Senate

Santa Fe

COMMITTEES
Chairman:
CONSERVATION
Member:
PUBLIC AFFAIRS

INTERIM COMMITTEES
Vice-Chairman:
CHILDREN AND YOUTH
STUDY COMMITTEE
Member:
RADIOACTIVE MATERIALS COMMITTEE
NATIONAL CONFERENCE OF
STATE LEGISLATURES
STATE GOVERNMENT ISSUES
& ORGANIZATIONS

March 9, 1985

Mr. John W. Fritz
Deputy Assistant Secretary
Bureau of Indian Affairs
1951 Constitution Ave., N.W.
Room 411 6N
Washington, D.C. 20245

Dear Mr. Fritz:

I represent the New Mexico Senate, District 23 (Los Alamos and Sandoval counties) which includes the Santa Ana Indian Reservation. I am writing your office to determine the status of the pueblo's dog track proposal. As you may be aware, I am in support of the economic development goals of the pueblo and the proposed dog track in particular.

The Tribal Administration has made a concerted effort to contact local municipal officials in the surrounding communities, and they have received almost universal support for the project from the respective mayors, councils, and county governments. The pueblo has a sound financial plan and will be working with a highly experienced management team. All in all, the development should be a strong stimulant to the local economy.

I would appreciate it if you could keep my office advised of your decision on this matter. Thank you.

Respectfully yours,

Stephen D. Stoddard

Stephen D. Stoddard
New Mexico State Senate

SDS/mag

cc: Governor Eliseo Raton, Sr., Santa Ana Pueblo
Roy Montoya, TA, Santa Ana Pueblo

BURT SHIRLEY
McKINLEY & CIBOLA COUNTIES
District 6
BOX 238
Home Telephone (505) 488 5222
CHURCH ROCK, NEW MEXICO 87311

COMMITTEES
Member:
CONSUMER & PUBLIC AFFAIRS
ENROLLING & ENGROSSING "B"

State of New Mexico
House of Representatives
THIRTY SEVENTH LEGISLATURE
Santa Fe

March 7, 1985

John W. Fritz
Deputy Assistant Secretary
Bureau of Indian Affairs
United States Department of Interior
18th & C Streets N. W.
Room 2024
Washington, D. C. 20240

Dear Mr. Fritz:

I want to offer the support and encouragement of my office to Santa Ana Pueblo's efforts at establishing a dog race track on reservation land. Santa Ana's work to bring this new industry into New Mexico will benefit not only the people of Santa Ana but all the communities surrounding their reservation. The success of the project will be a major contribution to economic development in New Mexico, and it deserves the support of the Bureau of Indian Affairs.

Sincerely,

Burt Shirley

Burt Shirley
State Representative
District 6

cc: Roy Montoya
Tribal Administrator

THOMAS E. ATCITTY
SAN JUAN COUNTY
District 4
P.O. BOX 1794
Home Telephone 368-4835
SHIPROCK, NEW MEXICO 87420

COMMITTEES
Member:
LABOR
TAXATION & REVENUE
Co-Chairman
DEMOCRATIC CAUCUS

State of New Mexico
House of Representatives
THIRTY SEVENTH LEGISLATURE
Santa Fe

March 6, 1985

Mr. John W. Fritz,
Deputy Assistant Secretary
BUREAU OF INDIAN AFFAIRS
United States Department of Interior
18th and C Streets, Northwest
Room 2024
Washington, D. C. 20240

Dear Mr. Fritz:

I should like to offer my encouragement and support to SANTA ANA PUEBLO in their effort to establish a dog race track on their reservation. SANTA ANA's energies to begin this new industry in the State of New Mexico will not only benefit the people of the Pueblo of SANTA ANA, but also in the communities surrounding it. The success of this business venture will be a major contribution to the economic structure of the state, and it merits the support of the BUREAU OF INDIAN AFFAIRS.

Yours truly,

Thomas E. Atcitty,
State Representative,
District 4

cc: Roy Montoya,
Santa Ana Pueblo

TEA:p.

RESOLUTION NO. 11-26-84 B

WHEREAS, the Pueblo of Santa Ana which tribe's reservation is near this Town of Bernalillo, New Mexico had advised the Town Council of its plans for economic development, the focal point of which is to be a greyhound race track at which pari-mutual wagering will be allowed. The track will be located in the area of State Highway 44 and the Jemez Dam Road; and

WHEREAS, the Pueblo's economic development plans including the establishment of a greyhound race track, will enhance job opportunities for residents of Bernalillo, will create other economic activity benefiting Bernalillo and will provide entertainment at the sports facility for residents of Bernalillo; and

WHEREAS, the introduction of the industry of greyhound racing in New Mexico would benefit local, tribal and state econmics and is an industry welcomed by most residents.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of Bernalillo that the Town Council supports the proposed economic development activities of the Pueblo of Santa Ana and encourages the completion of the greyhound race track facilities.

Done at Bernalillo, New Mexico, the 26th day of November, 1984.

Michael W. Foster - Mayor

ATTEST:

Ruth Lopez, Town Clerk

SEAL

RESOLUTION NO. R84-48

WHEREAS, The Pueblo of Santa Ana, which tribe's reservation is near this City of Rio Rancho, New Mexico, has advised the City Council of its plans for economic development, the focal point of which is to be a greyhound race track at which pari-mutual wagering will be allowed. The track will be regulated by the Santa Ana Racing Commission, and will be located in the area of State Highway 44 and the Jemez Dam Road; and

WHEREAS, The Pueblo's economic development plans, including the establishment of a greyhound race track, will enhance job opportunities for residents of Rio Rancho, will create other economic activity benefitting Rio Rancho and will provide entertainment at the sports facility for residents of Rio Rancho; and

WHEREAS, The introduction of the industry of greyhound racing in New Mexico would benefit local, tribal, and state economies and is an industry welcomed by most residents.

NOW, THERFORE, BE IT RESOLVED

By the City Council of Rio Rancho, that the City Council supports the proposed economic development activities of the Pueblo of Santa Ana and encourages the completion of the greyhound race track facilities.

PASSED AND APPROVED THIS 28th DAY OF NOVEMBER, 1984.

David E. Bruening

DAVID E. BRUENING, MAYOR

ATTEST:

JOANNE McGLOTHLIN, CITY CLERK

1971

VILLAGE OF CORRALES

P O BOX 707
TELEPHONE (505) 897 0502
CORRALES NEW MEXICO 87048

MAYOR PRO TEM
DEE TURNER
COUNCIL MEMBERS
DEE TURNER
REX FRANKLIN
GUS WAGNER JR
ANN B DUNLAP

THOMAS N GENTRY
MAYOR

11/2[illegible]/84

RESOLUTION NO. 84-10

A RESOLUTION GIVING INITIAL SUPPORT TO THE SANTA ANA PUEBLO FOR THE ESTABLISHMENT OF A GREYHOUND RACE TRACK

WHEREAS, the Pueblo of Santa Ana which tribe's reservation is located near the Village of Corrales, New Mexico has advised the Village Council of its plans for economic development, the focal point of which is to be a greyhound race track at which pari-mutual wagering will be allowed. The track will be regulated by the Santa Ana Racing Commission, and will be located in the area of State Highway 44 and the Jemez Dam Road; and

WHEREAS, the Pueblo has showed the Village of Corrales the courtesy of informing the governing body and its citizens of the dog track project and their plans,

NOW THEREFORE BE IT RESOLVED by the Village Council of Corrales New Mexico that the Village Council offers initial support for the proposed economic development activities of the Pueblo of Santa Ana and encourages the completion of the greyhound race track facilities, on the condition that joint powers agreements and renummeration will be negotiated for the impact on the public services of the Village.

PASSED, ADOPTED AND SIGNED BY the Village of Corrales, Corrales New Mexico on this 27 day of November 19 84 .

SIGNED:

Thomas N. Gentry
THOMAS N. GENTRY, MAYOR

ATTEST:

Kristine Brady
KRISTINE BRADY, CLERK

BERNALILLO
ROTARY CLUB
506 CALLE DE VARGAS
BERNALILLO
NEW MEXICO 87004

12/11/84

December 7, 1984

RESOLUTION OF THE ROTARY CLUB OF BERNALILLO

Resolution No. One

WHEREAS, the Pueblo of Santa Ana which tribe's reservation is near this city of Bernalillo, New Mexico has advised the Rotary Club of Bernalillo of its plans for economic development, the focal point of which is to be a greyhound race track at which pari-mutual wagering will be allowed. The track will be regulated by the Santa Ana Racing Commission, and will be located in the area of State Highway 44 and the Jemez Dam Road; and

WHEREAS, the Pueblo's economic development plans, including the establishment of a greyhound race track, will enhance job opportunities for residents of Bernalillo will create other economic activity benefitting Bernalillo and will provide entertainment at the sports facility for residents of Bernalillo; and

WHEREAS, the introduction of the industry of greyhound racing in New Mexico would benefit local, tribal and state economies and is an industry welcomed by most residents.

NOW, THEREFORE, BE IT RESOLVED by the Rotary Club of Bernalillo that the Club supports the proposed economic development activities of the Pueblo of Santa Ana and encourages the completion of the greyhound race track facilities.

Fred J. Carrillo

FREDERICK J. CARRILLO
President

RESOLUTION OF THE BERNALILLO DEVELOPMENT CORPORATION

Resolution No. 12 - 18 -84

WHEREAS, the Pueblo of Santa Ana which tribe's reservation is near this city of Bernalillo, New Mexico has advised the Bernalillo Development Corporation of its plans for economic development, the focal point of which is to be a greyhound race track at which pari-mutual wagering will be allowed. The track will be regulated by the Santa Ana Racing Commission, and will be located in the area of State Highway 44 and the Jemez Dam Road; and

WHEREAS, the Pueblo's economic development plans, including the establishment of a greyhound race track, will enhance job opportunities for residents of Bernalillo, will create other economic activity benefitting Bernalillo, and will provide entertainment at the sports facility for residents of Bernalillo; and

WHEREAS, the introduction of the industry of greyhound racing in New Mexico would benefit local, tribal, and state economies and is an industry welcomed by most residents.

NOW, THEREFORE, BE IT RESOLVED by the Bernalillo Development Corporation that the Corporation supports the proposed economic development activities of the Pueblo of Santa Ana and encousages the completion of the greyhound race track facilities.

Done this 18th day of December 1984.

Attest
Secretary

President

99TH CONGRESS
1ST SESSION
H. R. 1920

AS MODIFIED BY THE PUEBLO OF SANTA ANA

To establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1985

Mr. UDALL (for himself, Mr. MCCAIN, Mr. RICHARDSON, and Mr. BATES) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

---

A BILL

To establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gaming Control Act".

SEC. 2. The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities within Indian reservations or lands subject to tribal jurisdiction as a means of generating tribal governmental revenues;

(2) Federal courts have held that Indian tribes have the exclusive right to regulate gaming activity which is not prohibited by Federal law and which is conducted within a State which does not, as a matter of criminal law, prohibit such gaming activity;

(3) existing Federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming activities within Indian country; nor does existing Federal law provide clear guidance in determining the kinds of such gaming activities that are permissible;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal governments/ and
which goal requires that the Federal government exclusively regulate Indian gaming activities

(5) tribal operation and licensing of gaming activities is a legitimate means of generating revenues.

SEC. 3. Congress hereby declares that the establishment of Federal standards for gaming activities within Indian reservations and on Indian lands is necessary to meet the concerns which have been raised about such activities and to protect such activities as a means of generating needed tribal revenues.

SEC. 4. For the purpose of this Act—

(1) "Secretary" means the Secretary of the Interior;

(2) "Indian tribe" means any federally recognized Indian tribe, band, or nation; and

(3) "gaming" means to deal, operate, carry on, conduct, or maintain for play any banking or percentage game or other game of chance played for money, property, credit, or any representative value, but does not include social games played solely for prizes of minimal value or games played in private homes or residences for prizes of minimal value, or traditional forms of Indian gambling engaged in by individuals as part of or in connection with tribal ceremonies or celebrations. For example, if a state allows any pari-mutuel wagering, a tribe may allow pari-mutuel wagering on whatever competitions it determines are proper.

SEC. 5. Unless conducted pursuant to a tribal ordinance or resolution adopted by an Indian tribal government and approved by the Secretary of the Interior as provided in this Act, gaming within Indian reservations and on lands subject to tribal jurisdiction shall not be legal.

SEC. 6. (a) Except where a gaming activity is specifically prohibited within an Indian reservation or on lands subject to tribal jurisdictions by Federal law or where a gaming activity is strictly prohibited, in all respects whatsoever, within a State as a matter of criminal law, an Indian tribe may engage in or license and regulate such gaming activity within its jurisdiction if the governing body of the tribe adopts an ordinance or resolution which is approved by the Secretary pursuant to subsection (b).

(b) The Secretary shall approve any tribal ordinance or resolution concerning the conduct, licensing, or regulation of gaming activity within the tribe's jurisdiction if it provides, at a mininum that—

(1) the tribe itself will have the sole proprietary interest and will be responsible for the conduct of any gaming operation, except as provided in subsection (c);

(2) net revenues from tribal gaming operations will be used solely to—

(i) fund tribal government operations or programs,

(ii) provide for the general welfare of the tribe and its members, or

(iii) promote economic development;

(3) annual independents audits will be performed by the tribe; and

(4) no individual or entity other than the tribe or a wholly tribally owned enterprise, corporation or authority will have any proprietary interest in any tribal gaming operation.

(c) A tribal ordinance or resolution may provide for the licensing and regulation of gaming owned, operated, or conducted by individuals or entities other than tribe: *Provided*, That licensing requirements and regulations governing such gaming shall conform to the criteria contained in Regulations promulgated by the Secretary. ~~be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State.~~ No individual or entity other than the tribe or a wholly tribally owned enterprise, corporation or authority shall be eligible to receive a tribal license to own, operate, or conduct gaming activity on Indian reservations or on lands subject to tribal jurisdiction if such individual or entity/ does not meet the criteria contained in Regulations promulgated by the Secretary pursuant to this Act. ~~is not otherwise eligible to receive a State license to conduct the same activity within the jurisdiction of the State~~.

(d) Any duly submitted tribal gaming ordinance or resolution shall be approved or disapproved by the Secretary within ninety days of its submission. Any ordinance or resolution which has not been acted upon within ninety days after it is submitted shall be deemed to have been approved by the Secretary.

(e) The Secretary shall promulgate Regulations to implement this Act within 180 days after the effective date of the Act.

SEC. 7. (a) Subject to approval of the Secretary, a tribe may enter into a management contract for the operation and management of a tribal gaming enterprise for a reasonable fee: *Provided*, That, before approving such contract, the Secretary shall require and obtain the following information:

(1) the name, address, and other additional pertinent background information of every individual having a financial interest in or management responsibility for such contract; or in the case of a publicly held company, of those individuals who serve on the board of directors and as officers of such company;

(2) a description of any previous experience which the contractor or the persons listed pursuant to subparagraph (i) has had with other gaming contracts with Indian tribes or gaming licenses issued by an Indian

tribe or State, including the name or address of the licensing agency or other parties to any other gaming contract; and

(3) a complete financial statement of the contractor and those persons listed pursuant to subparagraph (i).

(b) Management contracts entered into pursuant to this section shall specifically provide that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provided to the tribal governing body on a monthly basis. Such contracts shall also provide that the appropriate tribal officials shall have reasonable access to the daily operations of the gaming establishment and shall have the right to verify the daily income made from any such tribal gaming operation.

(c) The Secretary shall not approve a management contract providing for a fee based upon a percentage of the gross or net revenues of the tribal gaming operation unless he finds that—

(1) the contractor has made or is committed to make a significant financial contribution to the tribal gaming operation: *Provided*, That such financial contribution does not result in such contractor acquiring a proprietary interest in the tribal gaming operation; or

(2) such fee based upon a percentage is only proposed to be in effect during the first two years of operation of the tribal gaming operation.;**

In no case shall such percentage fee exceed 40 per centum of the net revenues from such tribal gaming operation. In determining whether a proposed fee based upon a percentage of the net revenues is reasonable, the Secretary shall consider the rate of return if any, that the contractor is obtaining for his financial contribution under any other collateral agreement with the tribe.

(d) Each properly submitted contract shall be considered and notification of approval or disapproval shall be provided to the parties within ninety days of receipt of the proposed contract. The decision of the Secretary shall be final. Any contract not acted upon within ninety days shall be considered as having been approved.

(e) The Secretary shall not approve and may void any contract where he has knowledge that—

(1) any person listed pursuant to paragraph (a)(1) of this section is an elected member of the governing body of the Indian tribe which is a party to the management contract;

(2) any person listed pursuant to paragraph (a)(1) of this section has been or subsequently is convicted of any felony or gambling offense;

**unless the operator supplies or arranges construction, renovation and/or start-up capital in which event such fee may be in effect for a reasonable time after the term of any construction, renovation or development loan obtained by or with the assistance of the operator, or in the case of cash advances by operator, until sufficient revenues have been received to recover operator's cash advances and return a reasonable profit.

(3) any person listed pursuant to paragraph (a)(1) of this section has knowingly and willfully provided materially important false statements or information to the Secretary pursuant to this section; or

(4) the management contractor has deliberately and substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act.

SEC. 8. In fulfilling his responsibilities under this Act, the Secretary shall have the power to (1) inspect and examine all premises wherein gaming is conducted pursuant to the provisions of this Act, and (2) demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting the gross income produced by a gaming business, and (3) require verification of income and all other matters respecting the enforcement of this Act.

SEC. 9. The Secretary shall have the duty to preserve any and all information received pursuant to sections 7 and 8 as private and confidential and such information shall not be subject to disclosure to the public.

SEC. 10. Any existing gaming operation within an Indian reservation or located on land subject to tribal jurisdiction shall have one year from the enactment of this legislation to comply with its requirements. No change in state law shall be applied to prohibit a tribally authorized gaming activity was allowed by the state at the time it was approved by the tribe.

"DRAFT"

THE UNIVERSITY OF NEW MEXICO

WORKING PAPERS IN ECONOMICS

Santa Ana Greyhound Track

Economic Impact Study

Prepared by

Alfred L. Parker
Professor of Economics
University of New Mexico

and

Robert Patrick
Research Assistant
University of New Mexico

Department of Economics
The University of New Mexico
Albuquerque, New Mexico 87131

Santa Ana Greyhound Track

Economic Impact Study

Introduction

What would be the economic impact on Sandoval County and the State of New Mexico of the construction and operation of a Greyhound Track on the land of the Santa Ana Pueblo Indians? This question is the focus of the material developed and presented in this report. The nature and scope of the economic impact of such a facility is clearly an important consideration in the decision making process. It is therefore important that the economic impact be placed in proper perspective through a careful examination of the best available information about the organization and operation of the planned facility. It is the objective of this study to provide an accurate indication of the nature and scope of the economic impact that would be associated with the proposed Santa Ana Greyhound Track.

This report also contains a comparison of the income to be realized by the Santa Ana Pueblo under the "Management Contract" negotiated by the Pueblo with income that would be realized under the more commonly used "joint venture" arrangement.

The Santa Ana Pueblo has set aside a 406 acre tract of land that is to be used for the development of the Greyhound Track and other related facilities (food service, lodging, amusement, etc.) that would service the needs of Greyhound Track patrons and employees.

Although the development is clearly intended to include the Greyhound Track and other, what may be labeled, "service" facilities, the analysis presented in this report has been limited to the examination of the economic impact of the

Santa Ana Greyhound Track only . The planning of the "service" facilities -- restaurants, motels, RV parks, etc. -- that would be located on Pueblo acreage has not developed far enough to permit a detailed review of the employment, income and tax revenue impacts that would be associated with their construction and operation.

The Greyhound Track - An Overview

The development of the Santa Ana Greyhound Track may conveniently be divided into three distinct phases -- the construction phase, the training phase and the operational phase. Each of these phases would be expected to have important employment, income and tax revenue impacts although they would differ significantly in their nature, level, scope and duration.

The project currently calls for the construction of a $10 million track facility. This facility will cover 80 to 100 acres of the 406 acre tract set aside by the Santa Ana Pueblo for such development. It is estimated that the construction phase will take a period of 8 to 10 months. The construction phase would be expected to provide employment opportunities for a wide range of construction skills over the 8 to 10 month period. The great majority of construction materials required would be purchased through New Mexico suppliers, thus adding to the gross state product and generating taxable income and gross receipts that would result in an increase in county and state tax revenues.

Data is not available in sufficient detail at this time to permit the development of an estimate of the employment, income and tax impacts that would result directly from the construction phase. Although these impacts would be expected to be significant in number and dollar amounts, the relatively short duration of the construction phase reduces somewhat the importance of these economic impacts.

Similarly, data currently available does not permit the development of an accurate estimate of the level of employment, income or tax revenue effects that would be directly associated with the training phase of this project. Clearly some period of training would be required for personnel who would be operating the mutuel lines, working as paddock crews, etc.. Training would be expected to continue after the track was operational, but a short period of a few weeks prior to the opening of the track would be required to train new personnel to perform their various duties. During this period a somewhat reduced level of employment would be maintained with income and tax effects similarly below levels associated with either the construction or operation phases. The reduced levels of these impacts and the very short duration of the training phase clearly reduces the importance of developing accurate estimates of these economic impacts.

Direct Economic Impacts

The operating phase of the project would be expected to begin approximately 10 months after the initiation of the construction phase and would be expected to have longer term (more permanent) economic impacts on the Pueblo, county and the state. Basic data is more readily available for the operating phase than for either the construction or training phases. This is the case simply because there are a number of greyhound tracks now operating in the United States. The experience of these tracks over the past 20 years or more provide a base that can be used to estimate the employment and income that would be realized during the operating phase of the proposed Santa Ana Greyhound Track. The direct economic effects associated the the operational phase include significant employment opportunities for a wide range of skill levels (from veterinarian to photographer to parking attendent). It is expected that the majority of these positions would be available to area residents. It is also important to note that a large number of these employment opportunities will be for part-time employment (4 to 5 hours a day) and would be considered attractive positions for retired residents of the area or low income households seeking to supplement their current income with a part time job . The positions associated with mutuel lines, parking, and concessions are representative of such part-time employment opportunities that would be associated wiht the operation of the Greyhound Track.

The income realized from the "new" jobs created by the Greyhound Track also represents an important direct economic impact of the Santa Ana project. Pay scales for skilled labor would be expected to parallel that payed by the industry while pay scales for the less skilled positions would be expected to parallel pay scales for private sector employment in the Albuquerque area. Part time employment at competitive pay scales would clearly represent a significant addition to the relatively low average income level currently found in this region.

A third important direct effect associated with the operating phase of the project would be the effect on the tax revenues of state and local governments. Both income and gross receipt taxes would be positively impacted by the operational phase of the Santa Ana project.

Indirect Economic Impacts

The economic impact of the Santa Ana Greyhound Track would not be limited to the direct impacts on employment, income and tax revenues outlined above. In addition, all three phases of the project (construction, training and operating) would have quantifiable *indirect impacts* on employment, income and tax revenues.

Because of the data limitations noted in the discussion above, the analysis provided in this report of the so-called indirect impacts has been limited to the *operating* phase of the proposed Santa Ana Greyhound Track.

The indirect impacts would result from successive rounds of expenditures initiated by expenditures of income paid by the Greyhound Track to its employees. It would be expected that most of the "new" income generated directly by the operation of the Santa Ana Greyhound Track (representing a net addition to the regions and the states gross income) would be spent by Track employees within Sandoval County or more generally within the Albuquerque metropolitan area. In turn, those local merchants, landlords, etc., receiving these expenditures would pay these funds out in wages and salaries or make payments to suppliers of raw matrials or finished products needed to replenish declining inventories. These expenditures represent income to those receiving the payment and they would be expected to initiate additional rounds of expenditures as they spend this income. These successive rounds of income and expenditures would result in an increase in aggregate (or total) income for the region in an amount equal to some multiple of the "direct" income effect associated with employment in the Santa Ana Greyhound Track.

Local industry would be expected to respond to the increase in expenditures by expanding their staff and facilities to meet the increase in demand for their products or services. The increase in employment resulting from this response would be labeled an "indirect" employment effect. The development on non-Pueblo land of new restaurants, service stations, motels, RV parks, etc., to meet the needs of the Greyhound Track patrons and employees and the employment and income associated with these establishments would similarly represent a form of indirect impact that would be associated with the Santa Ana Project.

The total employment, income and tax revenue impacts of the Santa Ana Greyhound Track thus may be correctly defined to include both the direct and the indirect impacts that would be associated with, be the result of or a response to the Santa Ana Project. The total economic impact would exceed the direct impacts associated with the Track itself and be equal to some multiple of the employment, income and tax revenue impacts tied directly to the operation of the Greyhound Track.

The following section of this report examines in detail the "direct" employment, income and tax revenue effects associated with the operating phase of the proposed Santa Ana Greyhound Track. Employment, and income multipliers have been applied where appropriate to obtain an estimate of the total impact that the Santa Ana Greyhound Track would have on the regional and state economies.

The employment figures presented in the Greyhound Track's Organizational Chart does not include any new postions within the Santa Ana Nonprofit Enterprise (SANE) or the Santa Ana Racing Commission. Data is not available to permit their inclusion as either direct or indirect impacts of the proposed facitity.

Direct Economic Impact of the Santa Ana Greyhound Track

Figure 1 provides a graphic presentation of the organizational structure of the proposed Santa Ana Greyhound Track. This Organizational Chart provides a clear picture of the employment opportunities that would be provided by the Greyhound Track during the operational phase of the project. Four major departments have been identified within the organizational structure. These are the Mutuel Department, the Racing Department, the Maintenance and Facilities Department and the Service Departments. The Service Departments include a number of activities all of which would report directly to the Director of the Track, as would the Mutuel Manager, the Racing Secretary, and the Superintendent of Maintenance and Facilities. Security, Publicity, Concessions, Parking and Programs are all included under the heading of Service Departments simply because each provides an important "service" for the Track patron and in most cases each must deal directly with Track patrons in providing these services. Although the number of employees varies substantially from department to department each contains positions representing a wide range of managerial and technical skill levels.

In order to place the economic impact of the Greyhound track in proper perspective, two different levels of Track performance are examined. The Track performance levels identified as "low" and "high" scenarios are based on the results of the "Market Research Analysis Report" prepared by Sandia Market Research. This Report projected a "high" annual attendance figure (1984) of 1,800,000 and high parimutuel handle of approximately $180 million. The market research organization projected a "low" annual attendance and parimutuel handle of approximately 900,000 and $90 million respectively.

The numbers recorded on the Organizational Chart (Figure 1) represent the number of employees in each position under the "low" and "high" scenarios. For example, position 1.4 Mutuel Lines which indicates (100,200) means 100 employees for the "low" scenario and 200 employees for the "high" scenario. The dollar figure recorded by the position title is the approximate salary level (per employee) projected for that position.

Table 1 provides a summary of the positions expected in each department, the approximate salary level and gross income expected to be generated by each position under the two performance scenarios.

This exercise provides an estimate of Santa Ana Greyhound Track payroll of $4.1 million for the "low" scenario and $6.2 million for the "high" scenario. As noted earlier in this report, a careful review of the Organizational Chart reveals a variety of positions representing a wide range of skill levels. Highly skilled positions include those requiring significant experience in the greyhound racing industry (Track Manager, Director, Assistant Director, Racing Director, etc.) and/or those requiring extensive formal training (Veterinarians). Intermediate skill level positions (Judges, Secretaries, Photographer, Electricians, Mutuel Lines, etc.) and low skill level positions (Security Force, Maintenance Crews, Parking and Concession Personnel) are also strongly represented in the listing.

It is expected that most of the intermediate and low skill level positions would be filled by area residents seeking primary employment and/or a source of supplemental income. The January 1985 unemployment rates in Sandoval and Bernalillo County of 9.9 and 5.8 percent respectively and the projected salary levels for these positions as represented in the Organizational Chart suggest that there would be a substantial number of local applicants for each of these positions.

The Direct Income Effect

As summarized in Table 2, the Greyhound Track payroll under both performance scenarios generates significant additional income for the region. Such additional income directly associated with the Santa Ana Greyhound Track could result from distributions to the Santa Ana Nonprofit Exterprise (SANE) and distributions of racing purses to Kennel Owners.

The management contract between the Track developers and the Santa Ana Pueblo calls for SANE to receive a payment equal to 6 percent of the gross handle of the Track and a payment equal to 5 percent of the food and beverage sales at the Track. The distribution based on gross handle would equal $6 million and $10.8 million under the "low" and "high" scenarios respectively. It is estimated that the food and beverage distribution would be equal to approximately $150,000 under the "low" scenario and approximately $270,000 under the "high" scenario.

Kennel owners and operators who would be expected to locate in the area would receive approximately 4 percent of the gross handle in purses awarded in competitive performances. This distribution would be equal to approximately $3.6 million for "low" scenario and approximately $7.2 million for the "high" scenario.

It should be noted that neither the SANE distributions nor the distribution through purses are included in the estimate presented in this report of direct income generated by the Greyhound Track. While it is possible or even probable that some portion of the SANE distributions may be in turn distributed to individuals or households that are members of the Santa Ana Pueblo, it would not be useful at this point to speculate about such allocations. Other options available to the Pueblo Council would be to allocate these funds for Pueblo projects, to place the funds in a permanent fund, etc.. Thus, while some fraction of the SANE distributions may become direct income to members of the Santa Ana Pueblo it is not possible at this time to determine that fraction with sufficient certainty to include it in the estimate of direct income.

Similarly a portion of the money distributed in purses will represent direct income to the kennel operator (income = purse monies - kennel expenses). Data available at this time does not permit the estimation of this direct income component -- this component would be expected to vary substantially from kennel to kennel. For this reason no portion of the purse distribution is included in the estimate of direct income generated by the Santa Ana Greyhound Track.

While recognizing that there probably would be additional direct income effects associated with the Santa Ana Greyhound Track it is believed to be appropriate for the purposes of this study to start with a conservative estimate of the direct income impact. It is for this reason that the estimate presented here and recorded in Table 2 includes only Track payroll estimates in measuring the direct income impact of the project. The effect of this decision has been to bias all estimates of the economic impact of the Santa Ana Greyhound Track in a downward direction. Accordingly, errors in estimating economic impacts in this study are much more likely to be errors of underestimation, i.e., more likely to be errors on the low side.

For the "low" scenario the direct income estimate is $4,077,725 and for the "high" scenario it is $6,272,000.

The Direct Employment Effect

The same conservative approach has been adopted in generating an estimate of the direct employment impact. While it is recognized that SANE and purse distributions may more or less directly create new employment opportunities, for the reasons discussed above (insufficient data) the direct employment impact is assumed to be equal to the number of positions listed on the Track's Organizational Chart, i.e., the number of employees on the Track's payroll.

Contract services identified on the Organizational Chart (Computer Room Operation, Photographer, Film Patrol and Program Printing) are also excluded from the estimate of employment directly associated with the operation of the Santa Ana Greyhound Track. While private firms contracting to provide these services or products for the Santa Ana Greyhound Track may do so with existing staff, it is much more likely that additional employees would be hired to meet the needs of the new Track. These new positions are not included in the estimate of direct employment impact presented in this report. Likewise new positions established by SANE and the Santa Ana Racing Commission have not been included.

The resulting direct employment impact of the Santa Ana Greyhound Track is thus estimated conservatively to be 280 jobs for the "low" scenario and 460 jobs for the "high" scenario.

The Direct Tax Effect

The Santa Ana Greyhound Track would also have a direct impact on State and local tax revenues. The direct tax impacts would include, but would not necessarily be limited to, increased state income tax revenue and increased gross receipts tax for both the state and Sandoval County. By utilizing the direct income estimate and an "average" state income tax rate (provided by the New Mexico Department Taxation and Revenue) of 2.745 percent, estimates of the direct impact on state income tax revenues have been calculated. The direct impact of the Santa Ana Greyhound Track is estimated to be an increase in annual state income tax revenues of $111,934 for the "low" scenario and an increase of $172,144 for the "high" scenario.

An estimate of the direct impact of the Greyhound Track on gross receipts tax revenues has also been constructed. The construction of this estimate requires the identification of those categories of Track expenses that would be subject to gross receipt taxes and estimates of the level of those expenditures. The estimates for these major expense categories and the estimate of gross receipts tax revenue that would be realized under each scenario are recorded in Table 3. The direct tax revenue impact has been estimated to be $155,438 for the "low" scenario and $181,425 for the "high" scenario.

The "total" direct tax revenue impact associated with the Track (including state income and gross receipts taxes) has been estimated to be $267,372 for the "low" scenario and $353,591 for the "high" scenario.

Indirect Economic Impact of the Santa Ana Greyhound Track

As discussed earlier in this report the economic impact of the operational phase of the Santa Ana Greyhound Track would be expected to include both direct and indirect economic impacts. The indirect economic impacts may be viewed as basically the regional economy's response to the payroll and other expenditures made by the Track during the operational phase. More specifically the indirect economic impacts may be said to represent the response of the regional economy to the needs of the Track, its patrons and its employees. One obvious example of such a response would be the establishment of perhaps as many as twenty racing kennels, each maintaining approximately sixty dogs which will perform in the new track.

The jobs created by the establishment of these kennels, the income paid to employees and the taxes (gross receipts, property and income taxes) paid by the kennel and its employees represent a part of the so-called indirect economic impact associated with the Santa Ana Greyhound Track.

Other examples of expected indirect economic impacts include the development of new food service establishments, automobile service stations, new motels and new RV parks to serve Track patrons and Track employees. The development of such "new" business enterprises as well as the expansion of staff and/or facilities of existing enterprises providing products and/or services required by the track, its patrons and its employees would all be included as a part of the indirect economic impacts of the proposed Santa Ana Greyhound Track.

In order to obtain a measure representative of the indirect economic impact of the Santa Ana Greyhound Track an income multiplier developed by the New Mexico Bureau of Business and Economic Research (BBER) has been applied to the direct income impacts projected for the Santa Ana Greyhound Track as recorded in Table 2.[1] This income multiplier measures the economy-wide changes in income per dollar increase in wage or salary payments. The BBER has estimated the income multiplier to be 1.86. This means that a one dollar increase in wage or salary payments results in a total (direct and indirect) increase in New Mexico income of $1.86. The indirect impact on income is the .86 figure which represents the increase in wages and salaries paid by new and/or expanding enterprises responding to the needs of the Track, its patrons and its employees.

Applying the income multiplier to the direct income impact estimated for the Santa Ana Greyhound Track results in a estimated total (direct and indirect) increase in income of $7,584,568 for the "low" scenario and $11,665,920 for the "high" scenario. The indirect income impact associated with the Track is estimated at $3,506,843 and $5,332,000 for the "low" and "high" scenarios respectively.

These estimates of the indirect income impact associated with the Santa Ana Greyhound Track have also been used as a basis for development of estimates of both the indirect employment and the indirect tax revenue impacts associated with the proposed Track.

Assuming that the indirect employment resulting from the operational phase of the Greyhound facility involves employment that would provide an average income equal the state-wide average income level in New Mexico ($16,928) we may conclude that the employment multiplier will be approximately 1.7.[8] This means that the indirect employment associated with the Greyhound Track's "low" scenario would be approximately 196, with indirect employment associated with the "high" scenario of 322. Total employment (direct and indirect) associated with the Santa Ana Greyhound Track is thus estimated to be 476 and 782 for the "low" and "high" scenarios respectively.

When the effective tax rate for the state income tax is applied to the indirect income estimate for the two operational phase scenarios ($3,506,843 and $5,393,920) the indirect increase in state income taxes associated with the Greyhound Track are estimated to be $96,263 and $148,063 for the "low" and "high" scenarios respectively. (See Table 4)

The indirect impact on gross receipts revenues that would be associated with the Santa Ana Greyhound Track are more difficult to estimate with any degree of accuracy from information currently available. The estimate of the increase in gross receipts tax revenues is, given the level of income generated by the project, largely a function of how much of this income is spent in New Mexico and how much is spent on items subject to the New Mexico gross receipts tax.

In the estimates presented in the report it is conservatively estimated that 40 percent of the direct and indirect income would be spent in New Mexico counties (primarily Sandoval and Bernalillo Counties) thus generating gross receipts tax payments of over $125,145 under the "low" scenario and over $192,488 under the "high" scenario.

While it would be expected that the increase in employment and income directly and indirectly associated with the Santa Ana Greyhound Track would result in an increase in property taxes, data available does not permit the estimation of this and other positive impacts on tax revenues that would be associated with the operational phase of this facility.

The "Management Contract" -- An Evaluation

The "Management Contract" negotiated by the Santa Ana Pueblo provides for two distributions to the Pueblo's nonprofit enterprise (SANE) based on the level of the gross handle and the level of food and beverage sales at the Track. The distributions are to be calculated as follows:

Distribution #1 -- 6% of the gross handle

and

Distribution #2 -- 5% of the Tracks food and beverage sales

This represents a somewhat unique arrangement compared with the more usual joint venture approach now generally approved by the Bureau of Indian Affairs for bingo and other business ventures, such as oil and gas development.

Given the BIA's apparent preference for the joint venture approach it is appropriate to compare the income to be realized by the Santa Ana Pueblo under the "Management Contract" with the income that would be realized under a net profit joint venture arrangement.

Table 5 provides such a comparison. In this Table the income that would be realized from the gross handle (parimutuel betting alone) under three different contractual arrangements: the SANE Management Contract, a net profit joint venture in which net revenues are split 51/49 with 51 percent going to the Pueblo, and a net profit joint venture in which net revenues are split 60/40 with the 60 percent going to the Pueblo.

As in the examination of the economic impact of the proposed Greyhound Track, two performance scenarios are considered: the "low" scenario, $90 million handle and the "high" scenario, $180 million handle. In each performance scenario the Track payroll estimates developed in an earlier section of this report of $4.1 million and $6.3 million for the "low" and "high" scenarios respectively have been used in the construction of expense estimates. Other expenses are also included (See Table 3) to arrive at a total expense estimate of $8.0 million annually for the "low" scenario and $10.7 million for the "high" scenario.

A comparison of the distribution (or payment) of net revenues under the three different contractual arrangements reveals that under both scenarios the Pueblo is better off with the "Management Contract" in terms of the income it would realize.

Two sets of distribution figures are provided in Table 5 for each performance scenario. The one labeled "Before Payout" represents the distribution during the five year period that would be required to amortize the Track and start-up costs. The distribution labeled "After Payout" represents the distribution after the cost of the Track has been amortized and start-up costs paid.

Looking at the "After Payout" distribution (although the comparison is basically the same for the "Before Payout" distribution) the "Management Contract" results in a payment to SANE that is larger than would be received under a joint venture arrangement. The single exception is the income "Before

Payout" under the "high" performance scenario with a 60/40 joint venture arrangement. The income that would be realized by the Pueblo in this situation would be $180,000 more annually than they would realize under the "Management Contract". Note, however, that in the same "high" performance scenario and 60/40 joint venture arrangement the Pueblo would realize $1,020,000 more annually under the "Management Contract" in the "After Payout" period.

Under the "low" scenario the "Management Contract" the payment of $5.4 million (6 percent of the $90 million gross handle) is 62 percent more than would have been received under the 60/40 joint venture. The Santa Ana Pueblo would have to negotiate a 98.2/1.8 joint venture in order to receive the same annual income that it would receive under the "Management Contract".

Similarly, under the "high" scenario the "Management Contract" provides 18.4 percent more than it would recieve under the 60/40 joint venture arrangement. With the high performance level reflected in this scenario the Pueblo would have to negotiate a 66.3/33.7 joint venture in order to receive the same annual income it would receive under the "Management Contract".

The advantage to the Pueblo of the "Management Contract" can also been seen by calculating the level of the gross handle necessary to make the return from the net profit joint ventures equal that which would be realized under the "Management Contract". As shown in the Appendix of this Report, in the "After Payout" period the handle would have to reach $3.4 billion for the 51/49 net profit joint venture and $400 million for the 60/40 net profit joint venture in order for them to generate the same "After Payout" revenue that would be realized under the "Management Contract".

The results of this analysis indicates clearly that, at least in terms of the income that would be generated, the Pueblo would be better off under the

"Management Contract" than it would be under a joint venture arrangement.

Summary and Conclusions

It has been the objective of this study to develop estimates of the economic impact of the proposed Santa Ana Greyhound Track on the state and local economies. In this process, two possible performance scenarios based on the Sandia Market Research study have been examined. The "low" scenario assumes annual attendance of 900,000 and an annual gross handle $90 million. The "high" scenario assumes annual attendance of 1,800,000 and an annual gross handle of $180 million.

The employment, income and tax revenue impacts that would be associated with the operation of the Greyhound Track under these two scenarios have been estimated using standard economic analysis and making what must be characterized as conservative assumptions in the development of each estimate.

Under both performance scenarios it has been found that the proposed parimutuel greyhound track would have what must be considered a significant economic impact on the Pueblo, and on the local and state economies. Total (direct and indirect) economic impacts of the proposed Santa Ana Greyhound Track may be briefly summarized as follows:

Economic Impact	"Low" Scenario	"High" Scenario
1. New jobs created	476	782
2. Increase in Income	$7.5 million	$11.7 million
3. Increase in state tax revenues	$464 thousand	$657 thousand
4. Increase in county tax revenues	$24,690	$33,174

A more detailed summary of the projected economic impact of the proposed Santa Ana Greyhound Track is provided in Table 4.

The income that would be realized by the Santa Ana Pueblo under the "Management Contract" has been found to generally exceed the income that would be realized under alternative net profit joint venture arrangements.

Footnotes

1 See the income multiplier for services. Cummings, Burness and Patrick, Methods for Assessing Economic Returns from State-Supported Energy Research, Publication No. 2-71-4136, New Mexico Research and Development Institute, Santa Fe, New Mexico, January a984, p. 29.

2 The $16,928 figure is the median income figure reported in the New Mexico Statistical Abstract, 1984, Bureau of Business and Economic Research, the University of New Mexico.

Appendix: Comparison of Alternative Contract Arrangements

The comparisons of income to be realized by SANE under the alternative contract arrangements for the "low" and "high" performance scenarios indicate that the Pueblo is better off (at least in terms of income) under the "Management Contract". The results also suggest that at higher levels of gross handle the advantage of the "Management Contract" decreases. The obvious and an important question is -- at what level of gross handle would a net profit joint venture arrangement yield a higher level of income for SANE? The calculations presented here identify the level of annual gross handle at which the net profit joint venture arrangements would yield a level of revenue for SANE equal to what it would receive under the "Management Contract".

The calculations are developed first for the 51/49 net profit joint venture. The calculations for the 60/40 net profit joint venture are summarized at the end of this appendix.

The 51/49 net profit joint venture indicates that the income realized by SANE would be 51 percent of the net revenue earned by the Track. That is,

(1) $I_J = .51(\text{Net Revenue})$

The "Management Contract" would give SANE income equal to 6 percent of the gross handle. That is,

(2) $I_M = .06(\text{Gross Handle})$

In order to compare the two contract arrangements it is necessary to make some assumptions about the change in the level of expenses when the gross handle increases beyond $180 million. It is assumed in the calculations presented here that expenses would increase at the same rate for gross handles in excess of $180 million as they would for the increase from $90 to $180 million. As a result of this assumption expenses for all gross handles in excess of $90 million may be expressed as follows:

(3) $\text{Expenses} = 8 \text{ million} + .03(\text{Gross Handle})$

In order to find the level of gross handle at which the two contracts would provide equivalent incomes to SANE, equation (1) is set equal to equation (2). That is,

(4) $I_J = I_M$

Thus

(5) $.51(\text{Net Revenue}) = .06(\text{Gross Handle})$

Since net revenue equals gross revenue less expenses and gross revenue (as given in Table 5) is equal to 15 percent of gross handle, using equation (3) we find,

(6) $$\begin{aligned}\text{Net Revenue} &= .15(\text{Gross Handle}) - [8 \text{ million} + .03(\text{Gross Handle})] \\ &= .12(\text{Gross Handle}) - 8 \text{ million}\end{aligned}$$

Substituting equation (6) into equation (5) we have,

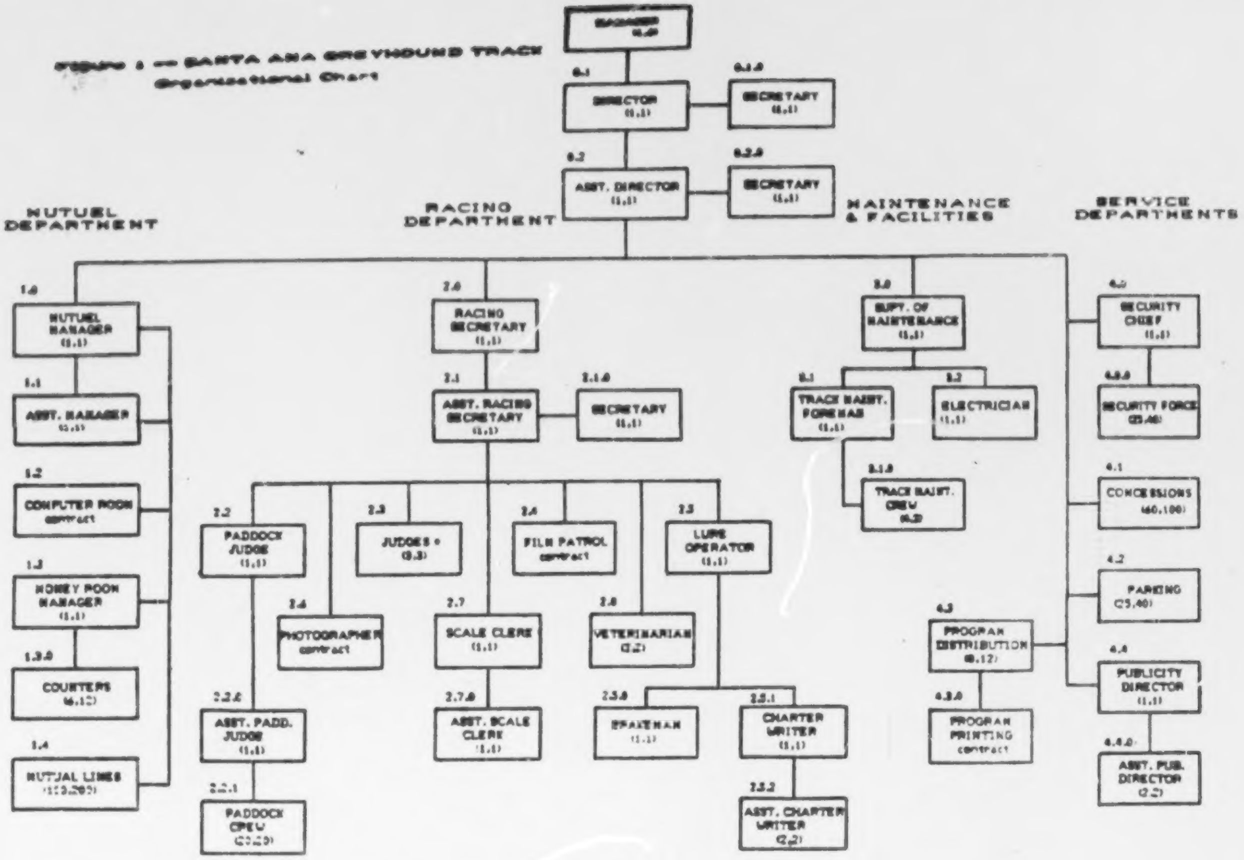
(7) .51(.12(Gross Handle)-8 million = .06(Gross Handle)
(8) .0612(Gross Handle)-4.08 million = .06(Gross Handle)
(9) .0012(Gross Handle) = 4.08 million
(10) Gross Handle = 3,400 million

This result tells us that the annual gross handle will have to reach $3.4 billion in order for the 51/49 net profit joint venture to yield as much income after payout as the "Management Contract" would yield. Or alternatively, should the annual gross handle exceed $3.4 billion then the 51/49 net profit joint venture would yield a higher level of income in the after payout period for SANE.

The level of annual gross handle at which the 60/40 net profit joint venture would yield an income equal to that which would be provided under the "Management Contract" is $400 million. This figure is calculated as follows:

(7a) .60[.12(Gross Handle)-8 million] = .06(Gross Handle)
(8a) .072(Gross Handle)- 4.8 million = .06(Gross Handle)
(9a) .012(Gross Handle) = 4.8 million
(10a) Gross Handle = 400 million

Figure 1 — SANTA ANA GREYHOUND TRACK
Organizational Chart



* One Judge to be paid by the Santa Ana Pueblo.

Table 1 -- Santa Ana Greyhound Track, Employees, Salary Levels --LOW SCENARIO

Pos. No.	Title	Number	Ave. Salary	Pos. Total
0.0	Manager	1	400000	400000
0.1	Director	1	100000	100000
0.1.0	Secretary	1	30000	30000
0.2	Asst. Director	1	100000	100000
0.2.0	Secretary	1	30000	30000
MUTUEL DEPARTMENT				
1.0	Mutuel Manager	1	50000	50000
1.1	Asst Mutuel Manager	1	25000	25000
1.2	Computer Room		contract item	
1.3	Money Room Manager	1	35000	35000
1.3.0	Counters	6	14000	84000
1.4	Mutuel Lines	100	14000	1400000
RACING DEPARTMENT				
2.0	Racing Secretary	1	50000	50000
2.1	Asst, Racing Secretary	1	25000	25000
2.1.0	Secretary	1	14000	14000
2.2	Paddock Judge	1	25000	25000
2.2.0	Asst. Paddock Judge	1	10000	10000
2.2.1	Paddock Crew	20	7000	140000
2.3	Judges *	3	15000	45000
2.4	Film Patrol		contract item	
2.5	Lure Operator	1	17000	17000
2.5.0	Brakeman	1	15000	15000
2.5.1	Charter Writer	1	42000	42000
2.5.2	Asst Charter Writer	2	15000	30000
2.6	Photographer		contract item	
2.7	Scale Clerk	1	10000	10000
2.7.0	Asst. Scale Clerk	1	8000	8000
2.8	Veterinarian	2	30000	60000
MAINTENANCE AND FACILITIES				
3.0	Superintendent	1	20000	20000
3.1	Electrician	1	25000	25000
3.2	Track Maint. Forman	1	12000	12000
3.2.0	" " Crew	4	10000	40000
SERVICE DEPARTMENTS				
4.0	Security Chief	1	40000	40000
4.0.0	Security Force	25	7500	187500
4.1	Concessions	60	11760	717600
4.2	Parking	25	5625	140625
4.3	Programs Distirbution	8	6250	50000
4.3.0	Program Printing		contract item	
4.4	Publicity Director	1	50000	50000
4.4.0	Asst Pub Director	2	25000	50000
		280		4077725

* One Judge to be paid by the Santa Ana Pueblo.

Table 1 -- Santa Ana Greyhound Track, Employees, Salary Leve's --HIGH SENARIO

Pos. No.	Title	Number	Ave. Salary	Pos. Total
0.0	Manager	1	400000	400000
0.1	Director	1	100000	100000
0.1.0	Secretary	1	30000	30000
0.2	Asst. Director	1	100000	100000
0.2.0	Secretary	1	30000	30000
MUTUEL DEPARTMENT				
1.0	Mutuel hanager	1	50000	50000
1.1	Asst Mutuel Manager	1	25000	25000
1.2	Computer Room		contract item	
1.3	Money Room Manager	1	35000	35000
1.3.0	Counters	12	14000	168000
1.4	Mutuel Lines	200	14000	2800000
RACING DEPARTMENT				
2.0	Racing Secretary	1	50000	50000
2.1	Asst, Racing Secretary	1	25000	25000
2.1.0	Secretary	1	14000	14000
2.2	Paddock Judge	1	25000	25000
2.2.0	Asst. Paddock Judge	1	10000	10000
2.2.1	Paddock Crew	20	7000	140000
2.3	Judges *	3	15000	45000
2.4	Film Patrol		contract item	
2.5	Lure Operator	1	17000	17000
2.5.0	Brakeman	1	15000	15000
2.5.1	Charter Writer	1	42000	42000
2.5.2	Asst Charter Writer	2	15000	30000
2.6	Photographer		contract item	
2.7	Scale Clerk	1	10000	10000
2.7.0	Asst. Scale Clerk	1	8000	8000
2.8	Veterinarian	2	30000	60000
MAINTENANCE AND FACILITIES				
3.0	Superintendent	1	20000	20000
3.1	Electrician	1	25000	25000
3.2	Track Maint. Forman	1	12000	12000
3.2.0	" " Crew	5	10000	50000
SERVICE DEPARTMENTS				
4.0	Security Chief	1	40000	40000
4.0.0	Security Force	40	7500	300000
4.1	Concessions	100	11960	1196000
4.2	Parking	40	5625	225000
4.3	Programs Distirbution	12	6250	75000
4.3.0	Program Printing		contract item	
4.4	Publicity Director	1	50000	50000
4.4.0	Asst Pub Director	2	25000	50000
		461		6272000

* One Judge to be paid by the Santa Ana Pueblo.

Table 2 -- The Direct Economic Impact of the Santa Ana Greyhound Track

	"Low" Scenario	"High" Scenario
Annual Attendance	90,000	1,000,000
Annual Gross Handle	$90 Million	$100 Million
Direct Employment	200	461
Direct Income (Payroll)	$4,077,725	$6,272,000
SAHE (6% of Gross Handle)	$5,400,000	$10,000,000
SAHE (5% of Food & Bev)	150,000	270,000
Dog Owners Purses (4% of Gross Handle)	$3,600,000	$7,200,000

Table 3 -- The Direct Impact on Income and Gross Receipts Tax Revenues

	"Low" Scenario		"High" Scenario	
State Income Tax	Income $4,077,725	Tax $111,934	Income $6,727,000	Tax $172,166
Gross Receipts Tax	Expenditure	Tax	Expenditure	Tax
Rental Expenses	$1,000,000	$41,250	$1,400,000	$57,750
Adv. & Pub. Relations	1,400,000	57,750	1,400,000	57,750
Program Printing	400,000	16,500	630,000	25,987
Insurance	300,000	9,000	300,000	9,000
Utilities & Phone	500,000	20,625	500,000	20,625
Track Supplies & Exp.	250,000	10,313	250,000	10,313
		$155,438		$181,425
State Revenue		$142,125		$165,750
County Revenue		$13,313		$15,675
Total Direct Tax Revenue Impact		$267,372		$353,591

Table 4 -- Summary of the Economic Impacts of the Santa Ana Greyhound Track

Economic Impact	"Low" Scenario		"High Scenario"	
Employment (Jobs)				
Direct Impact	280		461	
Indirect Impact	196		320	
	476		781	
Income				
Direct Impact	$4,077,725		$6,272,000	
Indirect Impact	3,506,843		5,393,920	
	$7,584,569		$11,665,920	
Tax Revenue	State	County	State	County
Direct Impact				
Income Tax	$111,934		$172,164	
Gross Receipts	142,125	$13,313	165,750	15,675
Indirect Impact				
Income Tax	96,263		140,843	
Gross Receipts	113,768	11,377	174,989	17,499
Total				
Income Tax	$208,197		316,553	
Gross Receipts	255,893	$24,690	340,739	33,174
	$464,090	$24,690	$690,466	$33,174

Table 5 -- A Comparison of Alternative Contract Arrangements

"Low" Scenario	Management Contract	Joint Venture 51/49	Joint Venture 60/40
Gross Handle = $90,000,000			
Gross Revenue (15% of Handle)	$13,500,000	$13,500,000	$13,500,000
Expenses (Estimate)	8,000,000	8,000,000	8,000,000
Net Revenues	$5,500,000	$5,500,000	$5,500,000
Distribution Before Payout			
Mortgage Expense ($10 million amortized over 5 yrs. at $3 million a year)	$3,500,000	$3,500,000	$3,500,000
Total Expense	$11,500,000	$11,500,000	$11,500,000
Managment Receives (9% of Handle - Expenses)	100,000	900,000	800,000
SWE Receives (6% of Handle - Mort. Exp.)	$1,900,000	$1,020,000	$1,200,000
Distribution After Payout			
Managment Receives (9% of Handle - Expenses)	$100,000	$2,695,000	$2,200,000
SWE Receives (6% of Handle)	$5,400,000	$2,805,000	$3,300,000

Table 5 (Continued)

"High" Scenario	Management Contract	Joint Venture	
		51/49	60/40
Gross Handle = $180,000,000			
Gross Revenue (15% of Handle)	$27,000,000	$27,000,000	$27,000,000
Expenses (Estimate)	10,700,000	10,700,000	10,700,000
Net Revenues	$16,300,000	$16,300,000	$16,300,000
Distribution Before Payout			
Mortgage Expense ($10 million amortized over 5 yrs. at $3.5 million a year)	$3,500,000	$3,500,000	$3,500,000
Total Expense	$14,200,000	$14,200,000	$14,200,000
Management Receives (9% of Handle - Expenses)	$5,500,000	$6,517,000	$5,120,000
SANE Receives (6% of Handle - Mort. Exp.)	$7,300,000	$6,283,000	$7,680,000
Distribution After Payout			
Management Receives (9% of Handle - Expenses)	$5,500,000	$7,987,000	$6,520,000
SANE Receives (6% of Handle)	$10,800,000	$8,313,000	$9,780,000

Mr. MONTOYA. The Pueblo of Santa Ana opposes State regulation of gaming. I believe that once the States are giving that authority over the tribes, those authorities could be used to leverage decisions by the tribes in other areas, such as land and water. Therefore, we feel that State regulation of Indian gaming is actually going to hurt the tribes more so than just gambling. That is our position.

Thank you.

Mr. TAYLOR. Thank you, Mr. Montoya.

I see that Bill Houle is at the table, too. Even though we don't have you listed on panel 3, while we are waiting for the Senator, why don't we go on into your testimony?

STATEMENT OF WILLIAM HOULE, CHAIRMAN, FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA, CLOQUET, MN, ACCOMPANIED BY JEFF WALLACE, COUNSEL

Mr. HOULE. Thank you very much for the committee to allow me to testify on behalf of the Fond du Lac Band of Lake Superior Chippewas.

I will try to break down my five-page testimony into just a few minutes. I am assuming, then, that it would be part of the record in its entirety.

Mr. TAYLOR. It will be.

Mr. HOULE. I would like to impress upon the committee the importance of gaming on the reservation. Fond du Lac has been involved in bingo since 1980. Since that point, we have made a corporation or a multimillion corporation which has provided for Fond du Lac services in health, education, and welfare.

As a result of the cutbacks in Federal Government programs, Fond du Lac was hurting very badly in the early 1970's and 1980's. We started our operation from the bootstraps. We rejected the management concept because we felt there would be a loss of control to the tribal government.

Since that time, we have managed ourselves by the concept of the school of hard knocks and learned to run the bingo operation in a very effective manner.

We recently, as a result of our bingo, have had the ability to be, under the Indian Tax Status Act, approved for a bond issue, which is part of my testimony. Ten years ago it was very difficult for tribal government to be even allowed in the door of a bank, let alone be approved for a bond issue.

I would like also to state, before I close, that on behalf of the band that there is a lot of misleading information, as I heard over the last 2 days. They talk about uncontrolled gaming. Fond du Lac has a very sophisticated ordinance and gaming commission and willing to learn.

We have attempted to send our committee to seminars in regard to the issues that have been brought up—skimming and criminal element. We were fortunate to host the national task force meeting on Fond du Lac in the presence of one of the people from Justice, Mr. Richards. Mr. Richards had the opportunity to review Fond du Lac's operation. Needless to say, we didn't hear from him, so I'm assuming that we're doing a good job.

I would also like to say at this time that there is continued criticism of tribes and tribal governments. I have always been an advocate of tribes running their operation. We at Fond du Lac believe that the concern has always been based at outside management, not tribal government operations. If tribes are given the opportunity to run their operation on their own, there wouldn't be that continued criticism of outside elements.

I again want to take the opportunity to thank the committee for allowing me to testify. For the record, the testimony, Fond du Lac is supporting S. 902.

[The prepared statement follows:]

PREPARED STATEMENT OF WILLIAM J. HOULE, CHAIRMAN, FOND DU LAC RESERVATION BUSINESS COMMITTEE

Dear Senator Andrews: On behalf of the Fond du Lac Band of Lake Superior Chippewa, I wish to thank the Committee for this opportunity to testify on Senate S. 920. Since the House is also considering bills in this subject area I will make some comments on how those bills are related to this Committees bill.

HISTORICAL BACKGROUND

The Fond du Lac Band of Lake Superior Chippewa's Reservation was established by the Treaty of 1854 in what is now the Northeastern or Arrowhead Region of the State of Minnesota. The people of Fond du Lac have been a self-governing body since the late 18th century whose culture has always included gaming as a vital element of it's social life. In 1980 Fond du Lac began to explore the use of Bingo and other forms of gaming as a means of generating sorely needed Tribal Revenue. Fond du Lac considered and rejected the use of a "Management Firm" because of the loss of tribal control that would have resulted, instead Fond du Lac choose to take a "Bootstrap" approach and started a small, a few thousand dollars a year, operation in the Fall of 1981 which is now a multi-million dollar operation that will be expanding to a second site in cooperation with the City of Duluth, Minnesota. The "Bootstrap" approach has provided Fond du Lac with the internal capacity to manage it's operations and the community the self-confidence of having a home grown success that is free of any taint of corruption that seems to surround management firms.

The revenues of the gaming operation have enabled Fond du Lac to meet some of the basic needs of it's community. It has enabled Fond du Lac to keep open it's High School, supplemented the Health and Social Services budget, provided emergency relief for victums of fires, funeral costs for those families without the means to pay the expenses, Scholarship, Athletic, and Cultural support to individuals. Perhaps most important of all Gaming has enabled Fond du Lac to make what it believes is the first bond issue under the authority of the Indian Tribal Government Tax Status Act for the construction of a new Health and Social Services Facility to replace the old "Indian Hospital" closed many years ago by Indian Health Services. Without the revenue stream from Fond du Lac's Gaming operation to serve as a secondary source of repayment there would have been no Bond issue. Fond du Lac hopes that the Committee and Congress will understand that Tribal Gaming is an essential element of tribal self-sufficiency and is as legitimate a right of local government as say the District of Columbia Lottery.

H.R. 2404

Fond du Lac now wishes to go on record as equivacably opposing House Bill H.R. 2404 as being immoral, unamerican and unaffordable by the United States of America. This Bill is nothing more than the expropriation of Tribal Gaming Resources for the exclusive benefit and protection of non-Indians.

When Fond du Lac first became aware of this attempt to take away it's gaming operation it sought "Political Risk" insurance. The usual source of such insurance is from the federal government for American firms operating outside the United States who may be subject to expropriation. It is therefore not available to Americans within their country. Fond du Lac then sought insurance from private carriers. No United States or Canadian Firm would write such a policy, Lloyds of London also would not write such a policy. At this time two Japanese Firms are considering whether or not to write the policy. The implication of such legislation is not only in the area of tribal gaming it also clouds all efforts of any tribe to negotiate with any commerical enterprise to operate on their reservation. Any business that knows that congress can unilaterally change the ordinances and authorities of the tribal government with which it negotiates for the benefit of the states is going to have serious qualms about negotiating with any tribe and locating on any reservation. Additionally, since the bill would result in the taking of a treaty right of self-government and the revenues that are raised because of that right would be diminished or destroyed it is Fond du Lac's position that the United States of America would owe Fond du Lac for all present and future revenues that would no longer be available to Fond du Lac.

H.R. 1902 AND S. 902

Fond du Lac believes that both House Bill 1920 and Senate Bill S. 902, there being little substantive difference between the two, provide an opportunity for both the tribes and the United States to take positive steps toward developing adequate and stable reservation economies.

Fond du Lac supports both H.R. 1902, "Indian Gaming Control Act" and S. 902 also the "Indian Gaming Control Act" insofar that both bills provide a clear statment that Indian tribes may or may not conduct gaming according to their own laws, when such is not prohibited by State criminal law, provides standards and deadlines for secretarial approval of tribal laws regulating gaming, establishes criteria for the approval of "management contracts". In regards to S. 902 Fond du Lac finds such legislation to be substantially the same as H.R. 1920 except for the establishment of Tribal Commission as an alternative to sécretarial review. Provided that tribes may have the option of not participating in the Tribal Commission review process and may use the Secretary instead. Fond du Lac supports S. 902.

RED HEARING ISSUES

Fond du Lac expects that you will hear testimony that (A) Indians engage in unregulated gaming, (B) organized crime is creeping in the back door of tribal gaming operations and (C) that Indian games are unfair competition for (I) charitable games and/or (II) for profit games. Fond du Lac takes the position that these are misleading issues. First, there is nothing unregulated about Indian gaming, whether or not a particular type of game is played is determined by Federal Law, either P.L. 280 or the Assimilative Crimes Act. The tribes themselves regulate the games played, the depth and sophistication of regulation by tribes runs the spectrum from more sophisticated and tightly controlled then any state to the same level as many state and local governments. Second, Fond du Lac in it's entire time as a member of the National Indian Task Force on Gaming in Indian Country has not become aware of a single Indian operation infiltrated by the "Mob", there are a few suspected instances of individuals who have gotten together to take advantage of tribes but this is no more or less than what has occured in state lotteries and state licensed charitable gaming. Third, Indian games have historically had only short term impact on nearby charitable games. The long term result has always been that those organizations who ran a businesslike operation showed an increase in customers and revenues because of the increased consumer awareness created by Indian games. Finally, for-profit organizations who complain of unfair competition are only attempting to preserve a state created monopoly that has always been subject to competition from another state or Tribal Government. Simply, the investors in these operations have made an error in not adequately researching their potential competition.

Mr. TAYLOR. Thank you, Mr. Houle.

Mr. HOULE. The mayor of Duluth is not here, but with me is my counsel, Jeff Wallace. I think he did want to add something.

STATEMENT OF JEFF WALLACE, COUNSEL, FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

Mr. WALLACE. Members of the committee, Mr. Taylor, I guess Fond du Lac would like to point out that one thing we have experienced from the results of this legislation and the other legislation being introduced has been that in particular the House bill, 2404, and the other talk about turning control over to the States has created a lot of uncertainty among the tribe and among its lenders and the people with whom it does business, and not just in the area of gaming.

Any investor who comes in to look at the reservation instantly becomes aware of the significant Federal role involved and the power of Congress to, in effect, reverse a tribal policy, tribal regulation, that they may be banking on or may be part of the agreement between the tribe and the investor.

Fond du Lac, as a result of this, has sought, for lack of a better term, political risk insurance—something so that we can protect ourselves from the uncertainties in this area. The Federal Government makes this available for American firms operating overseas, and it is not available to tribes. We sought it from United States and Canadian carriers and from Lloyd's of London; it has not been available. At this time we have two Japanese firms who are considering whether or not to write this policy.

This has been done once before in this country when a Japanese manufacturing firm set up an operation, I believe in the State of Kentucky, and was able to receive insurance against domestic content legislation.

Because of this, this introduction of this sort of bill and this sort of conversation, it has stymied our efforts in other business enterprises. People have said to us, "Fond du Lac, we cannot do business with you because we do not know whether or not our agreements with you will be valid in the future, whether or not the regulatory scheme they are based on will be present."

It is our hope that with this bill codifying—in effect, codifying the existing Federal case law—that this would introduce stability into the law and into the process, so that we can go out to the people we do business with and say, "Yes, there is some stability," and what regulations will apply, and Congress is thoughtful and will be concerned about the economic impact, not just on gaming but in all areas.

Thank you.

Mr. TAYLOR. Thank you.

First, let me ask Rod Lewis, who is also with the Gila River Tribe, do you have any comments that you would like to add to Mr. Antone's?

Mr. LEWIS. No, I don't have any comments at this time. I would be glad to respond to any questions or inquiries.

Mr. TAYLOR. Let's take a 5-minute break.

Mr. MONTOYA. I would like to add that the provisions for a gaming commission composed of tribes—we do have a little problem with that in Senate bill 902. We think that once the commission is set up, that commission would be composed of tribes already in the gaming business on Indian reservations. Some Indian tribes who might want to get into the gaming area or have gaming projects might be at a disadvantage if they had to have their ordinances and such reviewed by a gaming commission.

Mr. TAYLOR. I notice that the tribe did not support the regional gaming concept, which is in this bill and not in the Udall bill. I assume you would have no difficulty supporting a national gaming commission?

Mr. MONTOYA. The national gaming commission or the Secretary of the Interior—we feel that it is really his responsible to Indian tribes to review their ordinances, and we don't have any problem with the Secretary having full authority for Indian ordinances.

Mr. TAYLOR. Let's take a 5-minute break.

[Brief recess taken.]

Mr. TAYLOR. I believe Senator DeConcini is not going to be able to make it back. He had a conflicting schedule on something that started at one o'clock. So it is apparent he will not be back.

I have no further questions for the panel that was here. I gather neither June nor Mike have.

What I would like to do now is go back and pick up the remaining two tribal witnesses on panel 2, and then I am going to ask for a show of hands of who has airplane tickets or airplane connections they have to make today.

First, we will have panel 2. That is Robert Martin, chairman of the Morongo Band of Mission Indians, accompanied by his attorneys, Barbara Karshmer and Paul Alexander; and Stanley Jones, of the Tulalip board of directors, accompanied by Wayne Williams, the manager of the Tulalip Entertainment Center, and Doug Bell, their legal counsel.

Chairman Martin, why don't you go first?

STATEMENT OF ROBERT MARTIN, CHAIRMAN, MORONGO BAND OF MISSION INDIANS, BANNING, CA, ACCOMPANIED BY BARBARA KARSHMER, ATTORNEY, LAW FIRM OF FRAMPTON, KARSHMER & KESSELMAN, FRESNO, CA, AND PAUL ALEXANDER, ATTORNEY

Mr. MARTIN. Mr. Chairman and committee, thank you.

I want to open up by saying that Morongo at this time isn't interested in any other gaming. In fact, we have had offers from horse racing, dog racing, and card parlors, and they have been turned down. So we are not at this time interested in that.

We have bingo. What we feel is we have a bingo to be proud of and it can be an example to other Indian tribes within Indian country on how bingo can operate.

I am not here to brag in front of this committee, but I want to talk about what bingo means and has done for our tribe. Employment for Indian people in our area for 7 months has been $490,000; for non-Indians, $320,000. We have hired approximately 100 Indians that have worked for us.

We had a 64-percent unemployment rate within the reservation, and that is virtually wiped out now. We have had people who have been on welfare consistently. These people are off of welfare and are working for the tribe within our bingo.

I want to talk a little bit about our contract. The terms are 5 years and a 75/25 split for the tribe. We have a $100,000 guarantee that is a collateralized guarantee, and it is in an escrow account. That is $100,000 per month guarantee.

We have a management committee that oversees and controls policy within the bingo. There are three from the investor and three from the tribe that sit on this management committee. The management committee and the tribal council have access to the books at any time. We have paid by the tribe a tribal member that can go in at any time without notice and look at any different area in the bingo and see how the money is being handled.

Mr. TAYLOR. Mr. Martin, did you make the existing contract you have now a part of your prepared testimony or would you have any objection to making it a part of the record?

Mr. MARTIN. No. No, we wouldn't.

Mr. TAYLOR. It seems to me this might serve as a model for other tribes that might want to look at it.

Mr. MARTIN. We feel it would. We are very proud of what we have done.

Mr. TAYLOR. If you could send that whenever you have time.

[The contract referred to by Mr. Martin follows. Testimony resumes on p. 271.]

MORONGO BAND OF MISSION INDIANS
TRIBAL BINGO ENTERPRISE
MANAGEMENT AGREEMENT

This Agreement is entered into on May 17, 1984, by and between the Morongo Band of Mission Indians (hereinafter referred to as the MORONGO BAND) and CBA DEVELOPMENT CO., INC. (hereinafter referred to as the MANAGER or CBA) a California corporation having Dong Choi as its principal shareholder and having its principal place of business at 4536 Wilshire Blvd., Suite 103, Los Angeles, California 90010. The purpose of this Agreement is to enter into a Management Agreement for the establishment and operation of a Tribal Bingo Enterprise on the Morongo Indian Reservation in Riverside County, California.

RECITALS

WHEREAS the Morongo Band of Mission Indians is a federally-recognized Indian tribe possessing sovereign powers over the Morongo Indian Reservation located in Riverside County, California; and

WHEREAS the Morongo Band of Mission Indians is desirous of developing economic enterprises on its reservation in order to improve the economic circumstances of its members and to enable it to better serve the social, economic, educational, and health needs of its members and to enhance tribal economic self-sufficiency and self-determination; and

WHEREAS the operation of a Tribal Bingo Enterprise will provide employment and training for many MORONGO BAND members which is of great importance to the Band because the unemployment rate on the Morongo Indian Reservation is in excess of 60 percent; and

WHEREAS the operation of a Tribal Bingo Enterprise will provide significant financial resources to the MORONGO BAND without the necessity of any capital outlay by the MORONGO BAND; and

WHEREAS the MORONGO BAND has determined that a portion of the Reservation should be utilized for the establishment of a Tribal Bingo Enterprise; and

WHEREAS the MORONGO BAND presently lacks the resources and expertise necessary to establish and operate a Tribal Bingo Enterprise in an efficient and profitable manner, and thus, is desirous of entering into an agreement by which it may obtain the finances and management expertise necessary to establish and operate the Tribal Bingo Enterprise for a short term, but one which is sufficient to enable the MORONGO BAND to accumulate sufficient capital and expertise to assume full managerial control of said Enterprise at the expiration of this Agreement; and

WHEREAS CBA, acting as the MANAGER, can supply the necessary financing and expertise to establish a successful Tribal Bingo Enterprise for the MORONGO BAND and is committed to the principal of assisting the MORONGO BAND to develop its own management capabilities and sources of revenue to continue this operation successfully without outside assistance at the end of the term of this Management Agreement; and

WHEREAS CBA is desirous and willing to assist the MORONGO BAND in establishing a successful and self-sufficient Tribal Bingo Enterprise on the Morongo Indian Reservation;

NOW THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **PURPOSE:** The purpose of this Management Agreement is to establish and operate a Morongo Tribal Bingo Enterprise on the Morongo Indian Reservation.

2. **TERM:** The Morongo Band of Mission Indians hereby retains and engages MANAGER upon the signing of this contract for a term beginning immediately upon the signing of this agreement and extending for five (5) years from the date of opening of the Morongo Tribal Bingo Enterprise, provided that said opening occurs not later than one hundred twenty (120) days after the date of the signing of this Agreement. Subject only to the provisions of Paragraph 5(g) regarding events beyond the control of the MANAGER, in no event shall the five-year term commence later than one hundred twenty (120) days after the signing of this Agreement.

3. **ENGAGEMENT OF MANAGER:** The MORONGO BAND hereby retains and engages the MANAGER to finance, construct, improve, develop, manage, operate, and maintain the Morongo Tribal Bingo Enterprise under the supervision of the MORONGO BAND. It is the specific representation of the MANAGER that it has the financial ability to and will provide the funding to finance the development of the site, the construction of the building, the installation of equipment and supplies, and that it will provide the necessary cash to commence operations in a total approximate amount of One Million Two Hundred Fifty Thousand Dollars ($1,250,000) which MANAGER warrants it has available. The failure of the MANAGER to provide said funding for the construction and development of the Bingo facility or its inability to commence operation of the Tribal Bingo Enterprise within one hundred and eighty (180) days from the signing of this Agreement shall constitute a material breach of this Agreement and may, at the option of the MORONGO BAND, serve as

just cause for the MORONGO BAND to terminate this Agreement and declare it null and void, unless MANAGER's failure to perform has been caused by government order, material shortages, strikes, riots, storm, flood, natural disaster, or any cause clearly beyond the MANAGER's control. A lack of financing shall not be considered a cause beyond the control of the MANAGER.

4. **COMPENSATION:**

A. GUARANTEED MINIMUM MONTHLY PAYMENT TO MORONGO BAND: Because the MANAGER warrants that it has the ability to make this Tribal Bingo Enterprise profitable and successful, the MANAGER guarantees the following minimum monthly payment to the MORONGO BAND: For the first month of operation, the minimum income guaranteed to the MORONGO BAND shall be Fifty Thousand Dollars ($50,000); for the second month of operation the minimum income guaranteed to the MORONGO BAND shall be Seventy-Five Thousand Dollars ($75,000); and for the third month of operation and for each and every month thereafter, the minimum monthly income guaranteed to the MORONGO BAND shall be One Hundred Thousand Dollars ($100,000). In order to secure this guaranteed payment, the MANAGER shall, prior to the first day of operation of the Tribal Bingo Enterprise, establish an escrow account in the amount of One Hundred Thousand Dollars ($100,000). The location of the escrow account and the specific terms thereof shall be agreed upon in writing by the parties to this Agreement within sixty days of the date of the signing of this Agreement, but in no case later than ten days prior to the commencement of operations of the Tribal Bingo Enterprise. However, the basic terms of this account shall be that the MANAGER shall maintain a balance in this account of One Hundred Thousand Dollars ($100,000) at all times after the second month of operation. If the MORONGO BAND does not receive payment of the guaranteed minimum monthly amount required above by the sixteenth day of each month, then the MORONGO BAND shall present a sworn statement to the escrow holder stating the amount of money received and shall be entitled to withdraw such amounts as are necessary to bring the payment to the MORONGO BAND up to the minimum guaranteed payment for the month. Within five (5) days of being notified of any withdrawal by the MORONGO BAND from the escrow account, the MANAGER shall deposit the necessary amount to bring the balance in the escrow account up to One Hundred Thousand Dollars ($100,000). It is specifically agreed and understood by and between the parties that this guaranteed minimum monthly payment is to be considered a portion of the MORONGO BAND's seventy-five percent (75%) of the profits, but shall be paid to the MORONGO BAND even if it exceeds the share of the profits that would be due to the MORONGO BAND for that month. Notwithstanding the foregoing, the MANAGER shall be entitled to repayment of guaranteed payments made to the MORONGO BAND in excess of seventy-five percent (75%) of the profits and accrual of unpaid management fees as more particularly set forth in Subpart "B" below, provided that profits from the Tribal Bingo Enterprise are available for such payment after the guaranteed monthly payments have been made to the MORONGO BAND, and after construction and start-up costs have been repaid each month as provided in Paragraph 6 below.

B. PAYMENT OF MANAGEMENT FEE TO MANAGER: In consideration of the performance of the duties as described herein, and provided that said percentage is available for distribution after the MORONGO BAND has been paid its guaranteed minimum income as set forth in subpart "A" above, and after the repayment of the construction and start up costs is made as provided in Paragraph 6, MANAGER shall receive as a management fee twenty-five percent (25%) of the net operating profits for each fiscal year resulting from and in connection with the operation of the Morongo Tribal Bingo Enterprise for the duration of this Agreement, unless it is sooner terminated as provided herein. In the event that the MANAGER shall be required to make a payment to the MORONGO BAND in excess of seventy-five percent (75%) of the profits in any given month by virtue of the guarantee ("payment shortfall"), as more particularly set forth in Subpart "A," above, the MANAGER shall be entitled to repayment of the payment shortfall from revenues at the first available opportunity providing that repayment shall not interfere with the MORONGO BAND's additional monthly guaranteed payments. In the event that there will be inadequate revenues to pay a guaranteed payment to the MORONGO BAND and twenty-five percent (25%) of the profits to the MANAGER, the unpaid amount to the MANAGER shall accrue and shall be paid at the first available opportunity. (As used above, the term "first available opportunity" refers to the first regularly scheduled date for distribution of profits at which such funds are available.) By way of example, if in the third month the profits are Forty Thousand Dollars ($40,000), the shortfall shall be Sixty Thousand Dollars ($60,000). The MORONGO BAND shall receive One Hundred Thousand Dollars ($100,000) and the MANAGER shall be entitled to accrue Thirty Three Thousand Three Hundred Thirty Three Dollars ($33,333) profit as its twenty-five percent (25%) share plus repayment of the Forty Thousand Dollars ($40,000), both of which shall be paid when revenues are adequate to pay the MANAGER.

5. CONSTRUCTION OF THE BINGO FACILITY:

A. The MANAGER shall cause to be constructed or acquired a Bingo facility and related improvements on the Morongo Indian Reservation at the site approved by the MORONGO BAND acting through its Business Committee. The facility itself shall be approximately thirty-five thousand (35,000) square feet and shall be of sufficient size and capacity to safely and comfortably accommodate and provide refreshments for approximately two-thousand (2,000) seated patrons. There shall be provided sufficient parking and sanitary facilities to accommodate these patrons, as well as sufficient office space on premises for the effective management of the Enterprise. The Bingo facility shall have a water supply and sewer facilities which adequately meet the needs of the Enterprise without adversely affecting the MORONGO BAND's adjacent lands. No equipment nor any part of the improvements shall be obtained through lease unless the MANAGER first obtains the written approval of the Business Committee of the MORONGO BAND.

B. Detailed site and construction plans and specifications for the Bingo facility and appurtenant improvements shall be submitted to the MORONGO BAND for consideration and approval within fourteen (14) days of the signing of this contract. The MORONGO BAND, acting through its duly-elected Business Committee, shall have six (6) days from the date of receipt of said plans and specifications in which to request any changes or to state any objections thereto. The MORONGO BAND's approval of such plans and specifications shall not be unreasonably withheld. The MANAGER shall make or cause to be made any changes or modifications that are timely and reasonably requested by the MORONGO BAND so long as such changes or modifications will not increase the total cost of the Bingo facility and its appurtenant improvements. Failure of the MORONGO BAND to disapprove of or object to the plans and specifications within the time allowed shall be deemed the MORONGO BAND's approval thereof.

C. Prior to the commencement of construction of the facility, the MANAGER shall submit copies of all contracts and estimated or actual costs to be incurred in the construction of the facility. Prior to the commencement of construction, the total cost for the development of the site, for construction of the facility, and for all fixtures, furnishings and equipment shall be approved and agreed upon between the parties in writing.

D. The MANAGER shall provide all funds necessary to construct the Bingo facility and its appurtenant improvements. The MORONGO BAND shall not be liable for any construction costs or financing costs other than for the repayment provided herein. The MANAGER shall obtain, as an expense of construction, performance and payment bonds in amounts sufficient to cover all costs and phases of construction. The MANAGER shall keep the Bingo facility, its appurtenant improvements, and the portion of the Morongo Indian Reservation of which they are a part, free and clear of all mechanics' and other liens resulting from the construction of the Bingo facility and its appurtenant improvements. These costs shall be included as costs of construction.

E. The MORONGO BAND, acting through its duly-authorized Business Committee, shall have the absolute right to enter upon the premises and to inspect all aspects of construction during the period of construction.

F. The building shall be constructed in accordance with all fire and safety requirements of the State of California and the County of Riverside, although those requirements would not otherwise apply on the Morongo Indian Reservation. Arrangements shall be made to have the building inspected for such compliance if practical.

G. The MANAGER shall commence or cause to be commenced the construction of the Bingo facility and its appurtenant improvements within thirty (30) days following the execution of this Agreement and shall exert its best efforts to complete construction and commence operations within one hundred twenty (120) days of the signing of this Agreement. If the MANAGER is unable to complete construction and commence operations within one hundred twenty (120) days, the Manager shall pay the MORONGO BAND the amount of Three Thousand Three Hundred Dollars ($3,300) per day beginning one hundred twenty-one (121) days after the signing of this Agreement and terminating on the date on which the Tribal Bingo Enterprise commences operations. Any delays in the completion of construction of the Bingo facility and its appurtenant improvements caused by government order, material shortages, strikes, riots, storm, flood, natural disaster, or any cause clearly beyond the MANAGER's control shall be excused. A lack of financing shall not be considered a cause beyond the control of the MANAGER.

H. Title to any and all improvements and fixtures constructed or installed during the period of this Agreement shall vest solely in the MORONGO BAND. If any non-tribal government attempts to impose any possessory interest tax on either party to this Agreement regarding this Bingo operation, both parties shall resist such attempt. However, if a court of competent jurisdiction finally determines that any such tax is legally due, it shall be deemed an operating expense of the Morongo Tribal Bingo Enterprise.

6. REPAYMENT FOR COSTS OF CONSTRUCTION AND START-UP:

A. Upon the completion of construction, the MANAGER shall provide the MORONGO BAND with an itemized statement and back-up documentation substantiating the costs incurred for the construction of the building and for the equipment therein. The MANAGER shall also provide a detailed statement, accompanied by documentation, of all expenses incurred for the purpose of commencing operations of the Enterprise. In no event shall the MORONGO BAND be liable to reimburse the MANAGER for more than $1,250,000 of actual expenses incurred, nor shall the BAND be liable for any expenses for interest or financing associated with the funds utilized for the construction of, the equipping of, or the start-up costs of the Morongo Tribal Bingo Enterprise. All such interest and/or finance charges shall be the sole liability of the MANAGER and shall not be considered part of the net operating expenses of the business and are not to be reimbursed to the MANAGER by the MORONGO BAND. The documented costs shall be reviewed and approved or disapproved by the Business Committee of the Morongo Band within twenty days of their receipt by the MORONGO BAND. If any costs are questioned, the MORONGO BAND and the MANAGER shall meet and reach agreement on the amount to be reimbursed. The agreed upon documented costs for construction and commencing operations of the Morongo Tribal Bingo Enterprise shall be considered operating expenses of the Enterprise except as otherwise provided herein, and shall be repaid as follows:

(i) The repayment of any and all amounts determined to be due and owing to the MANAGER pursuant to

Paragraph A above shall be considered part of the operating expenses of the Morongo Tribal Bingo Enterprise and shall be paid prior to the distribution of any percentage profits, except not prior to the minimum monthly payments guaranteed to be paid to the MORONGO BAND pursuant to Paragraph 4 above.

(ii) Beginning with the distribution of funds from the first month's operation of the Morongo Tribal Bingo Enterprise, the MORONGO BAND shall reimburse the MANAGER one-twelfth (1/12) of the total documented and agreed upon costs incurred for construction of the facility and for the start-up of the Enterprise. This payment shall be made only to the extent that there are funds available to make such payment after the MORONGO BAND has its minimum monthly guaranteed income or such portion thereof as is available from the monthly profits of the Tribal Bingo Enterprise. If the full amount of funds necessary to make this repayment of one-twelfth (1/12) of the expenses incurred is not available from the profits of the Enterprise after the Morongo Band has received its monthly minimum guaranteed payment, then the construction repayment, or any part thereof not available, shall be deferred until after such time as all the other monthly payments have been made at the rate of one-twelfth (1/12) of the total costs. Any amounts not paid in the first twelve payments due to any inadequacy in proceeds shall be made on a monthly basis with no monthly payment to exceed one-twelfth (1/12) of the total costs of construction and start-up, beginning after the initial twelve (12) payments are due.

B. The MORONGO BAND's obligation to repay the expenses incurred by the MANAGER for the construction and start-up of the Morongo Tribal Bingo Enterprise shall only exist to the above extent and only for so long as the Morongo Tribal Bingo Enterprise is in operation. If the Morongo Tribal Bingo Enterprise ceases operations as the result of a decision of a court of competent jurisdiction or by the operation of any applicable legislation, or for any other reason, the MORONGO BAND's liability for the repayment of the facility construction expenses and start-up costs shall cease; provided, however, that if, after terminating the Tribal Bingo Enterprise prior to the expiration of this Agreement, the MORONGO BAND reinstitutes Bingo anywhere on its Reservation within ten years of the date of this Agreement, the Contract shall be reinstituted for any portion of the term still remaining at the time of cessation of Bingo activity.

7. MANAGEMENT DUTIES OF THE MANAGER: In managing the Enterprise, the MANAGER shall perform the following duties:

A. The MANAGER shall provide the logistical support to the Enterprise, including but not limited to, the furnishing and the management of the materials and equipment. In addition the MANAGER shall provide the Enterprise with an initial cash contingency reserve of $250,000, included within the contemplated $1,250,000.

B. The MANAGER shall provide the Enterprise with personnel management, including the selection, training and supervision of all employees of the Enterprise; provided, however, that the employees to fill the top managerial positions within the Enterprise shall be selected jointly by the Business Committee of the MORONGO BAND and the MANAGER. The salaries of personnel shall be included in the operating expenses of the Enterprise.

C. The MANAGER shall provide for the services of a licensed, bonded and insured security force sufficient to reasonably assure the safety of the customers, personnel, moneys, and property of the Enterprise. The cost of such security services shall be included in the operating expenses of the Enterprise.

D. The MANAGER shall be responsible for the administration, management, maintenance, and operation of the Enterprise, except for those functions specifically assigned herein to the MORONGO BAND or to the Management Committee described below. The MANAGER is hereby granted the full authority, in its capacity as the agent of the MORONGO BAND, to carry out its responsibilities set forth in this Agreement subject to the general policy supervision of the Management Committee and the MORONGO BAND.

8. MANAGEMENT COMMITTEE: There shall be established a Management Committee which shall be responsible for overseeing the overall operations of the Morongo Tribal Bingo Enterprise, and for setting policy for the management of the Enterprise. This Committee shall consist of six (6) members which shall include three (3) representatives of the MORONGO BAND designated by the Business Committee of the Band and three (3) representatives of the Manager. This Committee shall meet as often as necessary but not less than once per month. Its functions will include establishing and overseeing the general policies of the Enterprise concerning employment, working conditions, employee training, expenditures, construction, improvements, procurement, publicity, and similar matters, but not the day-to-day operation of the Enterprise.

The three members of the Management Committee who are the MORONGO BAND's representatives shall be compensated for the time spent on the Bingo Enterprise and any expenses incurred therefor. Payment for this purpose, in an amount to be agreed upon by the parties to this Agreement, shall be made by the MANAGER directly to the MORONGO BAND as an operating expense of the Enterprise, and the MORONGO BAND shall make payment to the individuals involved who shall be responsible only to the MORONGO BAND.

9. ANNUAL OPERATING BUDGET: The MANAGER shall prepare an annual operating budget and submit it to the Management Committee for its review and approval at least thirty (30) days in advance of the agreed-upon fiscal year, except during the first year when the budget shall be presented to the

MORONGO BAND's Business Committee for its review and approval at least thirty (30) days prior to the opening for business of the Bingo Enterprise. After the initial budget is approved, the Management Committee shall approve any changes made to said budget during the course of the year. At the beginning of each subsequent budget period, the Management Committee shall participate in the development of the budget and shall submit it along with its recommendations to the Business Committee of the MORONGO BAND for its review and approval. The budget shall be submitted to the Business Committee at least thirty (30) days before the beginning of the budget period and shall be reviewed and approved with any changes deemed necessary by the Business Committee within ten (10) business days of receipt of said budget. Failure of the Business Committee to respond to the proposed budget in the time allowed shall be deemed an approval of said budget.

10. ACCOUNTING AND BOOKS OF ACCOUNT: The MANAGER shall prepare and provide to the MORONGO BAND a monthly, quarterly, and annual statement of all sales, revenues, and all other amounts collected and received and all deductions and disbursements made therefrom in connection with the subject Enterprise. The MANAGER shall also hire a mutually agreed upon independent accounting firm to perform an annual audit of the same. The costs so incurred shall be operating expenses of the Enterprise.

The MANAGER shall maintain full and accurate books of account at the MANAGER's office on the Morongo Indian Reservation in Riverside County, California. The books shall be kept on a cash basis and the records shall be maintained using generally accepted accounting principles. The MORONGO BAND, acting through its duly-authorized Business Committee, shall have the right to inspect, examine, and copy all such books and supporting business records during normal business hours. Such right may be exercised through an agent, employee, attorney, or independent certified public accountant acting on behalf of the MORONGO BAND. The MORONGO BAND shall have the right to review the fiscal operations at any time and to independently audit said books at reasonable intervals. The costs of up to one (1) such independent audit in any twelve (12) month period shall be included as an operating expenses of the Enterprise.

11. CASH MANAGEMENT: The MANAGER shall install systems for monitoring of all funds, which systems shall be submitted in advance of implementation to the Business Committee of the MORONGO BAND for its approval. Any changes in such systems will be subject to review by the Management Committee after commencement of the operation. The MANAGER shall have the right and duty to maintain and police its system for cash management in order to prevent any skimming of receipts or loss of proceeds from the Morongo Tribal Bingo Enterprise, and the MORONGO BAND shall have the right to inspect and oversee this system at all times. The MORONGO BAND shall also have the right to designate a person of its choice to be present and count or oversee the counting of the cash revenues on a daily basis who

shall be paid as are the tribal representatives on the Management Committee.

A. The MORONGO BAND and the MANAGER shall agree on a bank for the deposit and maintenance of funds. The parties shall establish two (2) accounts in said bank, one for payroll and the other for a general account. Prior to each payday, transfers shall be made from the general account sufficient to cover that payroll for all employees of the operation. The MANAGER shall retain all responsibility and authority for making all payments from the payroll account and shall provide the MORONGO BAND with a monthly report on payroll expenditures including the names and job titles of the individuals employed by the Tribal Bingo Enterprise. The general account shall require one signature each from the MORONGO BAND's duly authorized representative(s) and one from the MANAGER's representative(s). Each month, from the general account, all direct and indirect costs of the operation shall be paid, as provided herein; and, the balance each month, excepting a reasonable reserve determined by the Management Committee, shall be divided and distributed between the MORONGO BAND and the MANAGER as provided in this Agreement.

B. All proceeds from the operation of the Morongo Tribal Bingo Enterprise, the sale of related products, snack bar revenues, and all other activities on the premises shall be deposited daily in the general account maintained jointly by the parties to this Agreement immediately after the termination of business. If the daily operation terminates in the late evening or early morning hours, all funds shall be deposited in the night depository of the selected bank. Adequate security shall be provided in transporting the funds to the bank; provided, however, that such funds as may be necessary for the next day's operation shall remain on the premises in a safe to be installed for this purpose. The parties hereto agree to obtain a transportation service to effect the safe transportation of the daily receipts to the bank.

12. DIVISION OF PROFITS: Within ten (10) days after the end of each calendar month of operation, the MANAGER shall calculate and report to the Business Committee of the MORONGO BAND the expenses and profit of the Enterprise for the previous month's operations; said profit shall consist of the amount by which the revenues generated exceed the operating expenses during said month. Operating expenses shall include, but not be limited to, salaries of personnel, employees and contractors; prizes; materials and supplies; utilities; repairs and maintenance of the subject property; employee benefit payments; insurance and bonding; advertising; accounting fees; security costs; costs to the MORONGO BAND and the MANAGER for legal fees related to this Enterprise incurred for obtaining advice, preparation of documents, and litigation; equipment; trash removal; other expenses designated as part of the operating expenses in this Agreement; and such other expenses approved by the Management Committee and the Business Committee of the MORONGO BAND from time to time as operating expenses of

the Enterprise. Repayment for construction and start-up costs as provided herein shall be considered part of the net operating expenses of the Tribal Bingo Enterprise, but shall not be paid until after the MORONGO BAND is paid its minimum monthly guaranteed payment as provided in Paragraph 4, above. Any profits remaining thereafter shall first be utilized for repayment of the start-up and construction costs, then for the repayment of any accrued amounts due the MANAGER, and finally for the division of profits between the MANAGER and the MORONGO BAND, with the MORONGO BAND receiving seventy-five percent (75%) of the profit and the MANAGER receiving twenty-five percent (25%) of the profits as fully set forth in Paragraph 4, above.

Not later than the fifteenth (15) day of each month, the MANAGER shall pay to the MORONGO BAND its minimum monthly guaranteed payment as provided in Paragraph 4 above. Next payment shall be made of the monthly payment due for the construction and start-up costs as provided herein to the extent that funds are available. Finally, to the extent that any funds remain available, the remaining funds shall be divided such that the MANAGER receives a return of any payment shortfall and its cumulative twenty-five percent (25%) of the profits after construction and start-up costs are repaid and the MORONGO BAND receives seventy-five percent (75%) of said profits.

13. EMPLOYMENT:

A. In order to maximize the benefits of the Tribal Bingo Enterprise for the MORONGO BAND, the MANAGER shall place special emphasis on the recruiting, training, and employment of members of the MORONGO BAND and other qualified Indians. Preference in employment shall be given to qualified members of the MORONGO BAND, especially for the top management positions in the Morongo Tribal Bingo Enterprise. The MANAGER shall also give preference to qualified members of the MORONGO BAND when selecting contractors or subcontractors and when hiring personnel for the construction of the project, if such personnel are available. The wage scale for all employees shall be commercially reasonable after considering the job involved and the rates prevailing in the area and shall be established by the MANAGER, reviewed by the Management Committee, and approved by the Business Committee of the MORONGO BAND. The MANAGER shall make all reasonable efforts to provide on-the-job training for the employees and opportunity for upward mobility in employment as an operating expense of the Enterprise.

B. A background check shall be done on each applicant prior to his/her being hired and no individual with a felony conviction or ties to organized crime shall be employed by the Enterprise; provided, however, that the Management Committee may grant a waiver of this condition regarding felony convictions for members of the MORONGO BAND if the tribal member has been convicted of a felony which is completely unrelated to the work that he/she would do for the Tribal Bingo Enterprise. All individuals to be hired for positions which involve the handling of money must meet the minimum requirements for obtaining bonding; and all such employees shall be bonded upon their commencing employment with the Morongo Tribal Bingo Enterprise unless the Management Committee waives this requirement because of the expense involved.

C. The MANAGER shall adopt personnel policies, including a grievance procedure, in order to establish fair and uniform standards for the employees of the Enterprise. The policies shall be approved by the Management Committee and the Business Committee of the MORONGO BAND prior to the commencement of operations.

D. None of the shareholders in CBA shall be compensated for their efforts or for any work which they perform in their capacity as the MANAGER of the Morongo Tribal Bingo Enterprise, other than the percentage of net profits which they receive as the MANAGER of the Enterprise. A waiver of this provision may be granted by the Business Committee of the MORONGO BAND only if special circumstances arise in which it would be in the MORONGO BAND'S best interest for such a waiver to be granted.

14. INSURANCE: The MANAGER shall maintain public liability insurance in the amount of at least $1,000,000 per person and $5,000,000 per occurrence for all activities on the subject property, and property damage insurance with liability limits of not less than $100,000 per occurrence with an aggregate coverage of $2,000,000. Contractor shall also keep the buildings, improvements, and contents therein insured for their full replacement value against loss or damage by fire, with extended coverage endorsement, and robbery, theft, malicious mischief and vandalism. The exact nature and extent of such coverage shall be agreed upon by the parties. Both the MORONGO BAND and the MANAGER shall be named as the insured in all policies and the Manager shall supply the MORONGO BAND with written evidence satisfactory to the MORONGO BAND of such coverage. The costs of said insurance shall be deemed a part of the net costs of operation.

15. USE OF PREMISES: The MANAGER shall not conduct or allow to be conducted on the premises any illegal activities or any activities not approved by the MORONGO BAND.

16. AUTHORITY TO EXECUTE: Each party warrants to the other that it has full authority to execute this Agreement.

17. NO PRESENT LIEN OR LEASE: The parties to this Agreement agree and expressly warrant that this Agreement is not a lease and does not convey any present interest whatever in the building or property on which the Tribal Bingo Enterprise is located or any proprietary interest in the Enterprise itself.

18. BEST EFFORTS: MANAGER shall devote its best efforts to the fulfillment of its duties outlined in this Agreement.

19. TERMINATION:

A. TERMINATION FOR CAUSE: The MORONGO BAND may terminate this Agreement in the event that the MANAGER commits or knowingly allows to be committed any theft or embezzlement. Either party may terminate this Agreement if the other party commits or allows to be committed any material breach of this Agreement. A material breach of this Agreement shall include, but not be limited to, a failure of either party to perform any duty or obligation on its part for any twenty (20) consecutive days within any 365-day period. Neither party may terminate this Agreement on grounds of material breach unless it has provided written notice to the other party of its intention to declare a default and to terminate this Agreement, and the defaulting party fails to cure or takes steps to substantially cure the default within twenty (20) days of receipt of such notice. The discontinuance or correction of the material breach shall constitute a cure thereof. In the event of termination for cause if the MANAGER is at fault, the MORONGO BAND will be paid all sums owed to it as of the date of termination, and the MANAGER will execute appropriate releases and will hold the MORONGO BAND harmless and undertake to indemnify it for any from all claims, notices, demands, liability, liens, mechanics' liens, stop notices, and similar contingencies which may follow such termination. If the MORONGO BAND is at fault, the MANAGER and BAND shall retain all moneys paid to and them and the MANAGER shall be compensated for construction and start-up costs to the extent that funds are available and to the extent that such costs have not previously been paid. Any funds remaining shall be divided seventy-five percent (75%) to MORONGO BAND and twenty-five percent (25%) to MANAGER, if the MORONGO BAND was at fault.

B. INVOLUNTARY TERMINATION DUE TO CHANGES IN APPLICABLE LAW:

It is the present understanding and intention of the parties that the establishment and operation of the Enterprise contemplated herein conforms to and complies with all applicable laws. In the event that this Agreement or the Enterprise is determined by the Congress of the United States, the Department of the Interior or a court of competent jurisdiction no longer to be lawful, the obligations of the parties hereto shall cease, and this Agreement shall be of no further force and effect; provided that the MANAGER shall indemnify and hold the MORONGO BAND harmless against all liabilities of any nature whatsoever created by or remaining after the termination of this Agreement; provided further that in the event that this Agreement and/or operation of the Enterprise is determined by the Congress, the Secretary of the Interior or a court of competent jurisdiction to be unlawful, the funds of the Enterprise remaining after final payment of operating expenses shall be distributed as follows: the MANAGER and the BAND shall retain all moneys paid to them and the MANAGER shall be compensated for construction and start-up costs to the extent that funds are available and to the extent that such costs have not previously been paid, provided that the MANAGER will execute the appropriate releases and will hold the MORONGO BAND harmless and undertake to indemnify it for any and all claims, notices, demands, liability, liens, mechanics' liens, stop notices, and similar contingencies which may follow such termination. Any funds remaining after the MANAGER is compensated for start-up costs shall be divided with seventy-five percent (75%) given to the MORONGO BAND and twenty-five percent (25%) given to the MANAGER. The MORONGO BAND shall be entitled to retain title to all Enterprise fixtures, improvements, supplies, and equipment located on the MORONGO INDIAN RESERVATION.

20. INTERFERENCE IN TRIBAL AFFAIRS: The MANAGER shall not directly or indirectly interfere with, become involved in, or attempt to influence the internal affairs of the MORONGO BAND, its members, or its tribal government. The breach of this condition shall be grounds for immediate termination of this Agreement.

21. SOVEREIGN IMMUNITY: By this Agreement, the MORONGO BAND of Mission Indians does not waive, limit, or modify its sovereign immunity from unconsented suit.

22. TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Agreement.

23. NOTICE: Any notice required to be given pursuant to this agreement shall be delivered by certified mail, return receipt requested, addressed to the MORONGO BAND as follows:

Tribal Chairman
Morongo Band of Mission Indians
11581 Potrero Road
Banning, CA 92220

with a copy to:

Barbara E. Karshmer, Attorney at Law
Frampton, Karshmer & Kesselman
925 N Street, Suite 150
Fresno, CA 93721-2256

and to MANAGER at

CBA Development Co., Inc.
4536 Wilshire Blvd., Suite 103
Los Angeles, CA 90010

with a copy to:

Roland Childs, Attorney at Law
Hertzberg, Childs & Miller
9454 Wilshire Blvd., Suite 500
Beverly Hills, CA 90212

24. **ASSIGNMENT, TRANSFER, OR ENCUMBRANCE:** This Agreement may not be assigned, transferred or encumbered by the MANAGER except with the written consent of the MORONGO BAND which retains the absolute right to deny consent to any proposed assignment, transfer, or encumbrance.

25. **CONSENTS AND APPROVALS:** At all places in this Agreement where approval or consent or other action of the MORONGO BAND is required, the MORONGO BAND's consent or approval will be granted or denied by formal action of the Business Committee of the MORONGO BAND and any such consent shall not be unreasonably withheld. In providing such consent or approval, the Business Committee will abide by the MORONGO BAND's written and unwritten custom and tradition in consulting with its membership, if necessary, regarding any action which it takes in regard to this Agreement.

26. **COMPLIANCE WITH TRIBAL REGULATIONS AND ORDINANCES:** In carrying out its obligations under this Agreement, the MANAGER agrees to comply with the duly-enacted Bingo Ordinance of the Morongo Band and with any and all other regulations or ordinances of the MORONGO BAND that are presently in effect or which may in the future be enacted.

27. **SUBMISSION TO THE U.S. DEPARTMENT OF INTERIOR:** This Agreement shall be submitted to the United States Department of Interior, Bureau of Indian Affairs for its review and approval. The parties agree to make any changes to this Agreement reasonably requested or required by said Department.

28. **EXECUTION IN DUPLICATE:** This Agreement is being executed in two duplicate originals, one to be retained by each party. Either is equally valid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CBA DEVELOPMENT CO., INC.

By: Douglas C Burrel

MORONGO BAND OF MISSION INDIANS

ROBERT MARTIN, TRIBAL CHAIRMAN

BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

Rodney

BUSINESS COMMITTEE MEMBER

Approved by the Secretary of Interior
or his duly-authorized representative:

______________________________ ________________
Date

MORONGO BAND OF MISSION INDIANS

TRIBAL BINGO ENTERPRISE

MANAGEMENT AGREEMENT

AMENDMENT NO. 1

The Morongo Band of Mission Indians and CBA Development Co., Inc., having entered into an Agreement for the Management of the Morongo Tribal Bingo Enterprise on May 17, 1984, do hereby agree to amend said Agreement on the date set forth below in order to obtain the approval of said Agreement by the Secretary of the Interior or his duly-authorized representative. Specifically, said Agreement shall be amended so that Paragraph 24 shall read as follows:

> 24. ASSIGNMENT, TRANSFER, OR ENCUMBRANCE: This Agreement or any portion hereof may not be assigned, transferred or encumbered by the MANAGER except with the written consent of the Secretary of Interior or his duly-authorized representative and with the written consent of the MORONGO BAND which retains the absolute right to deny consent to any proposed assignment, transfer, or encumbrance.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Morongo Band of Mission Indians Tribal Bingo Enterprise Management Agreement on the 10th Day of September, 1984 at Banning, California.

CBA DEVELOPMENT CO., INC.

By: Douglas C Burns

MORONGO BAND OF MISSION INDIANS

ROBERT MARTIN, TRIBAL CHAIRMAN

BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

Paul Martin
BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

Approved by the Secretary of Interior or
his duly-authorized representative:

Date

Mr. **Martin**. We require personal checks or background checks from all the investors, and we also take that a step further. Anybody who handles money, we have background checks. We have used the Bureau of Indian Affairs to get FBI checks on our investors.

When the investors came to us, I took it another step furtner and contacted other businessmen in Orange County where our investors are from and talked to them, got names, other people that I could talk to that knew these investors, and also talked to their banks. They are upstanding businessmen within Orange County.

Mr. **Taylor**. Did you make any contact with the State at all requesting assistance on the background checks?

Mr. **Martin**. With the State?

Mr. **Taylor**. Of California.

Mr. **Martin**. No.

Within our contract, we have—a term was in the contract for interference in tribal politics. If they interfere, then they can be in breach of the contract. We think we have covered that there.

Within our contract, we call for training of tribal members in management positions. We have 16 positions within the bingo that we feel are management. Thirteen of those are filled by tribal members and three are filled by outside people.

The first time in Morongo's history, we have been able to give scholarships to kids getting out of high school in continuing education. I believe that number is three this year. This is the first time in our history that we ever did that.

I believe that we would support an independent commission to regulate bingo, although the tribe itself has shut down two bingos that were on our reservation that we didn't agree with, either they went against our ordinance or there were some problems that we didn't agree with.

At this point I would like to turn it over to our counsel for further things she would want to talk about.

Mr. **Taylor**. Ms. Karshmer, you may proceed.

STATEMENT OF BARBARA KARSHMER, ATTORNEY, REPRESENTING THE MORONGO BAND OF MISSION INDIANS

Ms. **Karshmer**. Thank you.

I think I would start out, first of all, by responding to Mr. Corona's comment this morning and miscitation of a statement that I made before the House yesterday.

Yesterday before the House there was an inquiry as to whether the State would have jurisdiction through a tax inquiry or the Federal Government might have jurisdiction if there was a Federal income tax problem to look at the books of the investors, and I said, yes, the investors books would certainly be open to any State or Federal process. I didn't suggest that the tribe's books were open to—that the tribe would give their books away to the State, because the State has no jurisdiction and no reason to want to look at those books at this point.

Mr. **Taylor**. If there were a question involving Federal income tax, I assume that the tribal books would be available for Federal inspection?

Ms. **Karshmer**. For Federal inspection, I would imagine they would be. It would be something that the tribe would certainly consider. If there was a reasonable purpose for it, I don't think that there would be any problem.

Mr. **Taylor**. Well, I ask that question—I saw some testimony which I believe may be from Tulalip to the effect that when a prize in excess of a certain sum is awarded, there has to be a filing with the Internal Revenue Service. So I would assume that sort of concomitant with that is a Federal entitlement to review tribal——

Ms. **Karshmer**. Yes, I wouldn't—I can't imagine that the tribe would have any problem with that.

I would just like to clarify that under California law bingo is allowed for nonprofit organizations and various other public service type organizations. The major limitation is that prizes cannot be any larger than $250.

The State of California has refused to accept the six or more court decisions which have held that bingo is legal on Indian reservations, and the State is forcing the Morongo Tribe to relitigate the *Barona* case as well as all the other cases. The State simply will not abide by the 9th circuit decision in the *Barona* case, which is exactly on point to the Morongo situation.

I think this is more part of a pattern of practice on the part of the State to contest the tribal right of self-government and self-determination on the reservations, which they have done at every opportunity. I think bingo is only secondary to that. They have done it in regard to hunting, fishing, taxation, land use, any conceivable subject. Since the inception of Public Law 280, the State has fought the tribes and has attempted to restrict the tribes to being nothing more than voluntary social organizations. They would rather see that the tribes have no jurisdiction on the reservation, no ability to govern the reservation.

The thrust of the State's argument in the case of the present is that tribes can only regulate those very specific activities which tribes have engaged in forever. What they have said is tantamount to saying that if a tribal member or tribal members have always lived in teepees or hogons, if they no longer live in a teepee or a hogon and were living in modern housing, then the State could regulate that modern housing.

In the case of gaming, tribes in California have since time immemorial had gaming activities as an important part of their culture, and this has always been regulated by the tribes.

The State argues that, because the gaming was not called bingo, the tribes have not had gaming and, therefore, the State has jurisdiction. I think the State's position is unwarranted legally, and I think that in the 9th circuit, which is where we are currently, there will be a decision in the tribe's favor. The State has vowed to go on to the Supreme Court.

The State complains about unscrupulous investors. I think your legislation requiring approval of management contracts will go a long way in dealing with that problem. I think Mr. Martin's discussion of the tribal contract shows that the tribe can control what goes on in its gaming enterprise if it so desires.

I think questions this morning were very well taken about what the State has really done about all these allegations of unscrupulous activities. I think the fact is that the State has done nothing and that it is really hearsay and rumor that the State is operating on, rather than having anything concrete—to say that there was or is organized crime on any of the reservations.

Mr. TAYLOR. As I understand the State attorney general, his testimony, it was that if a tribe invites the State to come in and conduct an investigation, the State in fact has the legal authority at this time to conduct such an investigation and prosecute if they find that crimes such as skimming or embezzlement or essentially theft of tribal funds are involved. Would you agree with those——

Ms. KARSHMER. Yes, I would. I think it is important that we realize that there are really two separate areas under question here. There is the area of the legality of the tribe operating a gaming which the States don't and shouldn't have jurisdiction over, and on the other side there is the area of commission of simple crimes such as skimming or embezzlement or whatever it might be, that the State—at least in Public Law 280—States have unquestionable jurisdiction to deal with.

I think that the State tends to mix those two questions together to suggest that it should have jurisdiction to deal with everything, because they have the notion that there has to be organized crime where there is tribal gaming. I think that is just simply unfounded.

In fact, in the *Morongo* case in Federal district court the States stipulated that they did not allege that there was any or had been any organized crime involvement at Morongo and Cabazon as well. Mr. Corona spoke at great length of what crimes he sees at Cabazon. I am not counsel for Cabazon. I think Cabazon is going to submit their own testimony and can address that.

But I think it is essential to realize that tribes can control their own bingo operations and can do so successfully. As Mr. Martin mentioned, Morongo has closed down two bingo enterprises, one by going to Federal court and getting an injunction against violation of the tribal ordinance and getting the Federal marshals to come to the reservation and physically remove people from the bingo hall and lock it up, but it has been done and it can be done, and the tribe would not hesitate to do it again. I think that is probably the position of most tribes.

I think that you have to be cognizant of the fact that what the tribes are doing in regard to gaming is exactly what the States are doing. For example, in the State of California the State runs horse racing, which provides either the second or the third largest source of income to the State of California. More than $2 billion are wagered a year in horse racing to provide the State with a huge base of revenues. In addition, the State just enacted a State lottery by referendum vote, so the State will be funding its education programs through a lottery system. The tribes are doing nothing more than that. They are attempting to support legitimate tribal government activities through gaming as States are doing.

Just in closing, I would like to say that we urge the committee to adopt legislation reaffirming the tribe's rights to control economic development activity on its reservation through support of the gaming activities.

If you have any questions, I will be happy to answer them.

[The prepared statement submitted by Mr. Martin follows:]

PREPARED STATEMENT OF THE MORONGO BAND OF MISSION INDIANS SUBMITTED BY ROBERT MARTIN, CHAIRMAN

Mr. Chairman, members of the Committee, I am Robert Martin, the Chairman of the Morongo Band of Mission Indians; I am accompanied by Tribal Council Vice Chairman Mary Ann Andreas, Tribal Council member Ann Nelson, Arlene Craft, Tribal Bingo Management Committee member, and our attorneys Barbara E. Karshmer and Paul Alexander.

We are very grateful to the committee for holding these hearings and allowing us the opportunity to present testimony on the draft legislation that would provide federal standards for Indian gaming activities. Morongo, as you may know, has a tribal bingo enterprise which seats 2,000 people. It is the cornerstone of our efforts to provide economic self-sufficiency for our people. Because legislation would provide the best mechanism for insuring the permancy of gaming, with appropriate safeguards, we strongly support the thrust of H.R. 1920 and S. 902. We do not support H.R. 2404. In the final section of our testimony, we make specific recommendations which we are hopeful will improve the regulatory scheme that is being developed.

A brief description of our reservation and its paucity of traditional economic resources, and the economic condition of our people demonstrate why we feel so strongly about this issue.

The Morongo Band of Mission Indians is a federally-recognized Indian Tribe having more than 730 enrolled members, approximately 300 of whom reside on the Morongo Reservation. The unemployment level among Reservation residents was in excess of sixty-four percent (64%) and many Band members were unemployed and/or poverty-stricken before we began our Tribal Bingo Enterprise.

The Morongo Band is the beneficial owner of the Morongo Indian Reservation, which consists of approximately 32,300 acres of land located east of the City of Banning, in the San Gorgonio Pass, in the unincorporated area of Riverside County, California. The Reservation originally was created by, *inter alia,* a series of Presidential Executive Orders, Presidential proclamations, a federal statute and deeds.

The Morongo Reservation is located in a high desert, mountain pass area that has no known natural resources such as timber, wildlife or fish, oil or coal to utilize to create revenue for the operation of our government or the provision of services to our members. Of the Reservation's 32,254 acres, less than one square mile, consisting of a strip of land lying along the northern side of Interstate Highway 10, which passes through the Reservation, is suitable for economic development. Prior to beginning our Bingo operation, the tribe's total annual income from all Reservation sources was less than $10,000 per year.

Given this setting, it is apparent that for us, without any foreseeable viable economic alternatives, gaming provides the only realistic chance of meeting the President's stated policy of reducing tribal dependency on Federal programs and obtaining greater tribal economic self-sufficiency. As indicated in the description of the Morongo reservation, its resources and its people, our dependency on diminishing federal appropriations and programs has translated to substantial unemployment and poverty. Our Bingo Enterprise has made a major difference.

One of the major benefits of the tribal Bingo operation is the employment opportunities which it has created for our members. On a reservation like ours, this means that the former unemployment rate of 64% has been virtually eliminated. To date, we have employed 101 Indians and have made jobs available to all tribal members who want to work for the bingo enterprise. At present, 13 of our 16 top managers are Indians and are being trained to take over the entire operation. In addition, the Bingo has employed 20 spouses of tribal members. The total payroll for our Indian employees and their spouses in the first seven months of operation was more than $490,000.

The jobs we have created are significant in other respects as well. For example, of the Indians currently employed, 42 had been unemployed for up to one year before going to work for our operation, 16 had been unemployed for more than one year, and 7 of these Indians had never held any job at all. Overall, of our current 171 employees, 109 or 64% had been unemployed for some time before going to work at our bingo operation. Thus, besides decreasing the unemployment rate on the reservation, our operation has also decreased the unemployment rate of local area residents and has paid salaries totalling more than $320,000 to these local residents in the last seven months.

We are also enhancing the small businesses in these communities by bringing people into the area. Restaurants, gas stations, convenience stores, hotels, and the like have all benefited. Because this enterprise has positive economic advantages to the whole community, there is the developing potential to significantly improve tribal and local government relations.

I wish that I could say that the same potential existed for improving our relations with the State of California. It does not. Gaming, unfortunately, seems to be just another subject area for California to fight with the tribes over jurisdiction. Morongo is currently involved in litigation in the U.S. Court of Appeals for the Ninth Circuit to keep the State of California and the County of Riverside from shutting down the tribe's Bingo enterprise.

This litigation is not, however, a "test case" or a case of "first impression". The U.S. Court of Appeals for the Ninth Circuit held, in 1983, that tribally operated bingo operations were allowable in California because the California law (limiting bingo prizes to $250 when operated by nonprofit groups) was a civil regulatory law and did not apply to tribes under P.L. 280. The Court also noted that the purpose of Tribal Bingo was indistinguishable from the bingo allowed for nonprofit organizations under state law. See *Barona Group of the Capitan Grande Band of Mission Indians* v. *Duffy*, 694 F.2d 1185 (9th Cir., 1982), *cert. den.* 103 S. Ct. 2091 (1983). Despite the fact that this decision was exactly on point with the facts at Morongo, the County of Riverside threatened to close down the tribe's bingo operation and arrest our patrons and tribal employees. Because of these threats, we were forced to go to federal court to obtain an injunction against the County. The State of California intervened in this suit on the side of the County. The District Court held in favor of the tribe based on the *Barona* decision; and the State and County then appealed. Although all the briefs have now been filed in the Ninth Circuit, oral argument has not yet been scheduled.

The most salient point about the case is that the State and county have stipulated that there is no organized crime involved in the enterprise, despite the fact that fear of organized crime is their main stated interest in the subject.

It should be noted that each and every federal court which has ruled on Indian gaming and bingo in particular has held that the states do not have jurisdiction to control tribal gaming enterprises under P.L. 280 or otherwise. See, e.g. *Seminole Tribe* v. *Butterworth*, 658 F.2d 310 (5th Cir., 1981), *cert. denied*, 455 U.S. 1020 (1982); *Oneida Tribe of Indians* v. *Wisconsin* 518 F. Supp. 712 (W.D. Wisc. 1981); *State of Washington* v. *Hatch*,——F. Supp.——(W.D. Wa., Aug. 14, 1985) appeal dismissed (9th Cir., Feb. 21, 1985).

How strongly at odds the State of California and tribe are over this issue is demonstrated by California's Attorney General's request to the United States Department of Justice for the United States, the Tribe's Trustee, to enter the case on the side of California. To date, the Department of Justice has shown good judgment and declined the request.

The relationship of the tribes to the State on matters of jurisdiction has been one of constant conflict since the passage of P.L. 280. I will not repeat here the list of complaints and problems inherent in the P.L. 280 relationship for they are adequately detailed in the Final Report of Congress' own American Indian Policy Review Commission. The California tribes have long been on record favoring repeal of P.L. 280 or the complete retrocession of jurisdiction. This discussion is pertinent by way of backdrop to evaluate any proposals that are either based on P.L. 280 status or the philosophy which underlies P.L. 280 of terminating the Federal Indian relationship. We are unalterably opposed to such proposals.

H.R. 2404 is, in effect, a variation on P.L. 280 for purposes of Indian gaming. Although H.R. 2494 seems to retain jurisdiction in the Federal government and the tribes, such jurisdiction would need to conform the state law. Tribal consent to such a transfer of jurisdiction is required by the Indian Civil Rights Act of 1968. This mandatory prerequisite to any jurisdictional transfer is not proved for in H.R. 2404.

Although there are many potential areas for state-tribal cooperation, it would seem that in the area of gaming, the states and the tribes are competitors for the revenues needed to support governmental functions. A multi-billion dollar horse racing business in California provides needed revenues to the state. Recently the voters in California approved a state lottery that will offer prizes worth millions of dollars as well as raise millions in state revenues. Facing difficult revenue decisions, governments like Morongo and the State of California have turned to gaming. The difference is that the State of California wishes to prevent the government of the Morongo Band of Mission Indians from doing what the State of California is free to do.

The Morongo Band of Mission Indians believes that the stability that legislation like H.R. 1920 and S. 902 would provide is desirable. That stability, itself, would do much to cure some of the problems raised last June at the hearings of the House Interior and Insular Affairs Committee. With stability, the risk factor in financing a bingo operation would be reduced. Perhaps, even conventional financing would become available for the tribes to utilize. This would reduce a tribe's reliance on high risk financing. In short, the balance of power in negotiations between management firms and tribes would be altered in the tribe's favor and perhaps the need for management firms would diminish.

Much discussion over the past year has focused on the need to have an adequate regulatory scheme, a scheme that protects the tribes and the public, and discourages the so far theoretical attraction Indian gaming allegedly has for organized crime. We absolutely agree that an adequate scheme is needed. Most of the elements of that scheme are provided for in H.R. 1920 and S. 902. With some additions, these protective elements are already contained in the ordinance and management contract of the Morongo Band.

On April 23, 1983, the Morongo Band of Mission Indians authorized the playing of Bingo on the Morongo Indian Reservation. Our members determined that a Tribal Bingo Enterprise would promote the health, welfare, and general interests of the Band by providing a source of revenue to the Band for the provision of governmental services needed by our members, a source of employment for Tribal members, and a source of funding for programs to promote the health, education, and welfare of our members. We also found that, because we lacked the capital and the management expertise to build a Bingo facility, establish the enterprise and manage it on a profitable basis, it would be necessary to retain the services of a manager for our Enterprise. Our Ordinance prohibits the operation of any Bingo Enterprise on the Morongo Indian Reservation other than the Morongo Tribal Bingo Enterprise, and regulates in detail the days and hours during which the Bingo games may be conducted, the amount of prize money which may be awarded, the minimum age of participants, and restricts the use of the Band's Bingo revenues to "the support of programs to promote the health, education and general welfare" of the Band.

On April 26, 1983, the Morongo Band of Mission Indians entered into a very unfavorable agreement with Justus Enterprises under which the Band retained the services of Justus as the Band's agent for the purpose of managing the Morongo Tribe's Bingo Enterprise. Soon thereafter operation of the Enterprise began in a building Justus Enterprises had built for a tribal member on that member's allotment intending to operate as the individual member's bingo enterprise manager. While this Enterprise was in operation, it employed 86 Indians.

In January, 1984, after several months of attempting to renegotiate the Management Agreement, the Morongo Band voted to terminate its Agreement with Justus Enterprises and suspended operation of the Enterprise on or about February 9, 1984, until a new manager could be employed.

On May 17, 1984, the Band entered into a new five year management agreement with CBA Development Co., Inc. (hereinafter "CBA"), pursuant to which a new bingo facility costing more than $1.5 million was constructed on Tribal land, the Band receives not less than seventy-five percent (75%) of the Enterprise profits with a minimum guaranteed payment of $100,000 per month, and the Band is actively involved in the formulation and implementation of all the management policies of the Enterprise. The Agreement also provides for access to all business records, independent audits of the business, tribal participation in the daily count, a ceiling on reimbursement for construction of the facility, background checks on all investors and employees, Tribal approval of operating budgets and salary structure, Indian preference in employment, and a joint tribal and management committee to oversee, set policy for, and coordinate the entire operation. Moreover, the Manager has no proprietary interest in the bingo operation. This Management Agreement was approved by the Bureau of Indian Affairs pursuant to 25 U.S.C.§81.

The Tribal Bingo Ordinance provides and restricts the use of the Band's Bingo revenues to "the support of programs to promote the health, education and general welfare" of the Band's members. One of the first projects being funded through Bingo revenues involves the use of the bingo funds to train, establish and equip a tribal fire department because the County and City are unable to respond in a timely manner to fires on the Morongo Indian Reservation. We hope that the funds will enable us to improve living conditions on the reservation, to repair and maintain the Reservation water system which is in significant need of modernization and repair, to build a center and establish various programs for the senior citizens, to establish preschool and day care programs for the children of its members, etc. At present a tribal economic development plan is being prepared which will be utilized to determine the most appropriate uses for these Bingo profits.

We know that we have an excellent contract, one that should be a model for the industry. We know that we have a good, well run game. Our employees are tribal and local people; our management officials are Californians; and our bingo on-site manager got this many years of experience in nonprofit Bingo games in nearby cities and counties. Our customers have a good time and keep coming back. We think that overall we have a success story, a story that goes far in achieving the goals set out by President Reagan in January 1983:

> It is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction.
>
> Without sound reservation economies, the concept of self-government has little meaning . . . .
>
> Since tribal governments have the primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed.

Our success story did not happen overnight and it did not happen without mistakes. Perhaps most important, it shows Indian determination to grow and profit from our experiences. One issue that has been raised is a tribe's ability to control gaming activities on the Reservation. This has not been a problem for the Morongo Band despite the fact that California is a Public Law 280 state and despite the fact we have no tribal court of our own. When negotiations broke down with Justus Enterprises over the initial bingo operation in early 1984, the tribe rescinded its approval of the Management Agreement for that operation and closed the Bingo hall several weeks later. Had further action been necessary, the tribe would not have hesitated to take the matter to federal court to close that operation.

In fact, the tribe did go to federal court and obtain an injunction against the violation of its tribal bingo ordinance in September 1984. At that time a tribal member opened his own private bingo operation which violated the tribal ordinance. When this occurred, the tribe immediately went to federal court to obtain an injunction against the individual operating the bingo games to terminate his violation of the tribal ordinance. When the individual member refused to comply with the Court's injunction, the tribe obtained a court order requiring the federal Marshal to close the bingo hall which was carried out. The tribe obtained a further order requiring the removal of all the equipment and furnishings in the building, and had those removed as well.

From these examples, it becomes clear that a tribe can, if it so desires, terminate any bingo operations on its reservation which it feels are not operating in its best interest. The Morongo Band has done so successfully on two occasions and would not hesitate to do so again. It should be noted that other tribes have also taken control of their bingo operations and ousted the managers whom they felt were not operating in the tribe's best interests as is evidenced by the several Federal court cases in the last two years involving the issue of whether tribal bingo management agreements are required to be approved under 25 U.S.C. § 81.

RECOMMENDATIONS:

Section 2(2) of S. 902 pertaining to what the federal Courts have held is a better technical description than contained in Section 2(2) of H.R. 1920. We believe that it is important that this finding which is repeated in later sections be as clear as possible; the somewhat misleading reference to criminal law in H.R. 1920 would unfortunately encourage more litigation in this area.

Section S(3) in S. 902 should be deleted. This section is not found in H.R. 1920. The finding which relates to tribal concerns over the ability to control organized crime is, in our opinion, inaccurate. The organized crime concern has been raised by states and the Department of Justice. In fact, as we understand the concern, it is not a current concern but some ill-defined concern over the future. Our tribe, for one, believes that we can control this situation and we have no intention of allowing organized crime, or even just plain crooks, to conduct business on our reservation.

Section 2(6) of S. 902 is better phrased than the similar provision Section 2(5) in H.R. 1920.

Section 3 of S. 902 which uses the jurisdictional standard of "Indian Country" is the definition usually found in federal statutes, and as such is preferred to the definition contained in Section 3 of H.R. 1920.

Section 4(2) of S. 902 defines Indian tribe more expansively and as such is preferred to the definition in Section 4(2) of H.R. 1920.

Section 5 of H.R. 1920 provides a clearer definition than does Section 5 of S. 902 with respect to the illegality of any gaming not conducted pursuant to an approved tribal ordinance or resolution. The references to specific federal or tribal laws in S. 902 are too limiting. In P.L. 280 states, certain types of criminal prosecutions may need to be referred for state prosecution.

Section 6(a) of S. 902 which uses the Indian Country and public policy language is in our view more technically correct than Section 6(a) of H.R. 1920.

Section 6(b)2 of S. 902 provides two additional uses for which net revenues may be utilized (charities and donations to local governments) which are not provided in H.R. 1920. We believe that these are appropriate uses.

Section 6(b)3 of both bills should be amended to make clear that "independent outside audits will be obtained by the tribe".

Section 6(d) of both bills should be clarified to make clear that the Secretary must make a substantive decision to disapprove and not simply reject a tribal resolution or ordinance because he or she has not had the time to review it.

Section 7 of H.R. 1920 is preferred to Section 7 of S. 902. It provides for more controls over contractors and provides for a lower profit ceiling. As such Section 7 of H.R. 1920 is very similar to the provisions of our existing management contract. There are two additional protections in our management contract that should be added to Section 7; they are: (1) a minimum guaranteed payment to the tribe that has preference over retirement of the development/construction costs; and (2) an agreed upon ceiling for the repayment of development/construction costs. In addition, a provision that prohibits management contracts from running more than five years would go far in assisting tribes to develop their own expertise and protect against some of the problems that have been so apparent in land and natural resource leasing.

Section 7(a)1 of H.R. 1920 and Section 7(a)i of S. 902 should be modified to provide that "any entity or individual" "having a financial . . ."

Section 7(a)2 of H.R. 1920 and Section 7(a)ii of S. 902 should be expanded to include "involvement with the gaming industry" whether or not state licensed or with a tribe.

Section 7(b) of H.R. 1920 contains more protections than Section 7(b) of S. 902 and as such is preferred.

Section 7(c) of H.R. 1920 provides for a good conceptual scheme to evaluate management contract by tying the fee to a standard of reasonableness. We are, however, concerned with the two year limitation on the percentage of revenues fee system. We believe that when the management firm earns more, the tribe earns more; thus, when a management contract is based on a percentage fee, there is excellent incentive for management to fun top flight games. When management earns a fixed amount, two risks are presented: (1) incentive is diminished and (2) if revenues slip, from increased competition or any number of unforeseen events, the fixed fee system may end up being too high a fee.

Section 7(e)4 of H.R. 1920 and Section 7(d) of S. 902 should be changed to provide that "the management contractor has deliberately *or* substantially failed . . ." instead of ". . . has deliberately *and* substantially failed . . ." Both deliberate failure and incompetence should be grounds for voiding a contract.

Section 11 of S. 902 sets up the Regional Gaming Commission that is referred to throughout the provisions of S. 902. The Morongo Band of Mission Indians favors some form of a self-regulating Commission that could exercise the authority of the Secretary of the Interior. Such a Commission could be staffed wtih experts, could enter into contracts or compacts with states where appropriate, and it could be self-supporting. Such a mechanism would avoid creating a new bureaucracy within the BIA; that would be positive since the BIA does not seem to be particularly equipped to be helpful in this area. The Regional Commission, envisioned by S. 902, however, would not work in California. The structure of requiring agreement of a majority of at least two thirds of the tribes would bar the creation of such a Commission. We also question why non-gaming tribes should have a role or vote in setting up such a Commission. We would prefer a mechanism that would authorize gaming tribes to form such Commissions or even a single nation-wide Commission as may be appropriate.

CONCLUSION

Since time immemorial the Morongo Band of Mission Indians has engaged in extensive on-reservation gambling activities and has regulated such activities on the Morongo Reservation, as this legislation would confirm their right to continue to do. According to Dr. Lowell Bean, the noted anthropologist:

> Traditional gambling techniques have continued among these people from time immemorial until the present. Gambling has at no time in the history of the [Moronogo tribe] ceased as a significant activity, including today. . . The time and place where gambling was engaged in were controlled, sanctified and protected by traditional leaders of Indian communities. . . After Indians began to deal socially and

economically with non-Indians throughout the Spanish, Mexican, and American periods, non-Indians were encouraged to come to [gamble].

Dr. Bean concludes that the tribal bingo enterprise on the Morongo Indian Reservation is a "present day adaptation of the traditional ways" of the tribe in using tribal lands for gambling, recreation, and for generating an income from gambling and spending by outsiders for the benefit of the reservation.

It is for these very reasons that the Morongo Band supports the passage of appropriate legislation to enable the tribe to become economically self-sufficient and to generate funds to operate its tribal government and provide necessary services to its members.

Mr. TAYLOR. We will go on to the Tulalip Tribe and then I may have a few questions for some of you.

Mr. Jones?

STATEMENT OF STANLEY G. JONES, SR., MEMBER, TULALIP BOARD OF DIRECTORS, MARYVILLE, WA, ACCOMPANIED BY WAYNE WILLIAMS, MANAGER, TULALIP ENTERTAINMENT CENTER, AND DOUGLAS L. BELL, COUNSEL

Mr. JONES. Mr. Chairman, my name is Stanley G. Jones, Sr. I am a member of the board of directors of the Tulalip tribes of Washington State. On behalf of the board, I would like to thank you and the committee for the opportunity to present the views and recommendations of the Tulalip tribes concerning S. 902.

With me we have our attorney, tribal attorney, Douglas Bell, and we also have a tribal member who is the operator of our bingo center, our tribally-owned bingo center.

Mr. Chairman, I have written a statement for the record, and I request permission to read a summary into the record.

Mr. TAYLOR. Your full statement will be made a part of the record in its entirety.

Mr. JONES. Thank you, Mr. Chairman.

The Tulalip board of directors strongly recommends the enactment of appropriate legislation in the area of Indian gaming to address major legal and public policy issues that have arisen over the past several years.

We have examined S. 902 carefully. We strongly support the goal and objectives of this proposed legislation. However, we are deeply concerned over the possible impact of section 11, which would authorize the tribes to establish regional Indian gaming commission to regulate gaming with Indian reservations.

Certain regulatory authorities that are currently vested in individual tribes would be vested in these commissions. The Secretary of the Interior would be directed to delegate to the commissions certain regulatory powers conferred on him. The Tulalip tribes object to these provisions because they would permit an outside group, a commission, to interfere with the business dealings of a tribal government.

In our view, this provision would permit the invasion of tribal sovereignty through the farming out of Secretarial regulations, regulatory authorities, trust responsibility, and government-to-government relations.

The Tulalip tribes own and operate a modern, well-maintained gaming enterprise, the Tulalip Entertainment Center, that will accommodate 1400 players. The center is totally owned and operated by the tribe and is managed by a tribal member.

At the present time the center has 85 full-time employees. Fifty-nine are tribal members and 14 are married to tribal members. Forty-two were unemployed or underemployed before being hired by the center. Twenty received some form of public assistance. The benefit of this employment accrues to off-reservation communities as well.

The payroll for the center in fiscal year 1984 was $1.2 million and it is expected to reach $1.3 million in 1985. The net income for fiscal year 1984 was $582,018. This income is dedicated to badly needed social service programs, tribal government operation, tribal economic development and debt service.

Our accounting system is state of the art, and we have hired an outside accounting firm to audit our books. The center's manager is accountable to our people through the board of directors.

The board believes it has exercised its sovereign power in a right, responsible manner in establishment of the entertainment center. We believe that our approach will guarantee maximum benefits for our membership.

Mr. Chairman, the Tulalip Tribe urges the committee, through enactment of appropriate legislation, to protect the valuable sovereign right under which we established our center. We would support enactment of S. 902 with amendments we propose in our written statements.

We would like to have Mr. Bell say a few words, our attorney, please?

Mr. TAYLOR. Certainly.

STATEMENT OF DOUGLAS L. BELL, COUNSEL, TULALIP TRIBE

Mr. BELL. Through you, Mr. Taylor, to the chairman and other members of the committee, I would like to address briefly in a little more detail our comments upon 902.

Mr. Jones has indicated that we have some constructive criticism, I believe, to section 11 and the regional gaming commission. We don't believe that is appropriate. We would, however, with proper input and ability to comment, perhaps support a national gaming commission under the auspices of the Secretary. It need not, of course, be under the Bureau. If I recollect, something similar may have been done and generated out of this committee in regard to the Navajo-Hopi Relocation Act and the establishment of a separate nonbureau but Secretarial-directed committee.

Now we have trouble with section 2, sub 2, as pointed out, and in some further detail we would like the deletion of the phrase "as a matter of public policy" and the substition therefor, "as a matter of Federal law."

The difficulty we have with public policy is not what we understand the staff's intent to be by the incorporation of same, but rather that it is not quite the legal word of art that it is presumed to be.

In Washington State there has been the *Farris* case arising out of Puyallup [illegible] casino gambling in which "public policy" and the phrase first arose, and it was used as such in reference to the particularity of the State statute prohibiting professional gambling. It arose again in the previously mentioned *Lummi* case, but in that instance it was not so much the incident of professional gambling, but "public policy" was taken to be any matter of violation of the State's statute per se.

We now have the current thread of cases ending with the *Tulalip* and *Barona* situations where "public policy" is now defined as those games which the public may play at will.

Also, trouble is further caused us with the inclusion of the phrase "public policy," in that without our phrase of suggested substitution it is undetermined in our mind where the "public policy" will be determined, whether that be in State court or whether that will be in Federal court. Our experience, although we were able to get the suit removed to Federal court, is that the State will seek to have "public policy" determined as a matter of State law, and that is not the status of the law, but the recent cases, including what Ms. Karshmer talked about, indicate that the state of law is apparently no bar to States' attorneys general in determining how to treat sovereign nations.

Second, we suggest that in section 6(a) the phrase "by State public policy is a matter of criminal law" be deleted and substituted therefor the phrase, "where the general public is not free to engage in the activity at will." We believe that is the holding of *Barona*. The phrase "criminal law," as we know, will occur—will lead to States taking criminal or penal sanctions upon what otherwise are patently civil regulatory matters, and thus again engendering litigation, which we hope this legislation would put to an end.

Certainly it should not be so, as has been held by *Barona* and *Bryan*, but again States attorneys general, in dealing with Indian country, seem to be rather indefatigable.

We believe that if the committee and the Congress are of a mind that if an activity may be played by the public at will, that if it is one that is conducted by charitable or governmental organizations, and if the proceeds from such go to support government, social, or charitable programs, then that should be codified as good Federal policy and not left to continual attacks, hoping for an aberration from some circuit to overturn what is now established and fair.

Last, our comments are that we would hope section 4, sub 2, in your definition of Indian tribe be that as contained in Udall. We feel that the definition is overly broad, and one perhaps more appropriate in legislation for educational grants or other types of fundings, not one appropriate establishing a scheme of government-to-government relationships.

Finally, I would share the concern of the Senator from New Mexico in that any regulation by the State may well lead to discrimination. I know that in our State, the State of Washington, the appointments by the Governor, as affirmed by the legislature, to the State Gambling Commission are among the most political, and it is also an established political reality or fact that tribes in that jurisdiction are not a part of that process. We certainly would not want to be subjected to that.

I think that all of us in the non-Indian community in the State of Washington took some shame in the Supreme Court's comment in affirming the *Boldt* decision on Indian treaty fishing rights, wherein they noted that State agencies and their disobedience of established Federal district and circuit court orders regarding those Indian treaty rights was paralleled only by the racial discrimination cases of the 1950's and 1960's in the South. It is in that context that we felt very uncomfortable with any State regulation, and we would seek a codification of the established law and a regulation of what has been described as either abusive or parasitic practices by management companies.

Thank you.

Mr. TAYLOR. Thank you.

Mr. Williams, do you have any comments you would like to add?

Mr. WILLIAMS. Not really, Mr. Taylor, other than to reinforce what has already been said by our tribe.

I happened to be vice chairman and chairman of the Business Committee on our tribal council when the proposal was made to our tribe by an outside management company. Our group declined to do it that way. We felt that we wanted to be totally responsible for it and be in total control. From that standpoint, then our tribe invested the money. We went to the bank and also to the Bureau and borrowed the necessary funding to construct the facility. We did utilize an outside manager that we hired as an employee. The intent was that he would stay on long enough to train tribal members to the point where they could take over. Six months after he was there then he left and some of his key people, and from that time on it has been totally tribally supervised and managed.

[The prepared statement submitted by Mr. Jones follows:]

PREPARED STATEMENT OF THE TULALIP TRIBES OF WASHINGTON SUBMITTED BY STANLEY G. JONES, SR., MEMBER, TULALIP BOARD OF DIRECTORS

I welcome the opportunity to testify today to offer the views and recommendations of the Tulalip Tribes of Washington concerning S.902, the Indian Gaming Control Act. Also, on behalf of our governing body, the Tulalip Board of Directors, I extend our appreciation to Senator DeConcini for his sponsorship of this measure, and to the Committee for scheduling this hearing.

The Tulalip Board of Directors strongly recommends the enactment of appropriate legislation in the area of Indian gaming to address major legal and public policy issues that have emerged from this activity over the past several years.

While Indian tribes clearly possess the sovereign right to conduct gaming activities within their jurisdictions—free from state control—we believe that legislation is necessary as an appropriate means of assuring the preservation of this valuable sovereign tribal right. We base our position on the fact that the emergence of gaming activities, particularly bingo games, on Indian reservations over the past several years has generated major legal and public policy issues in the Indian field that require resolution.

The Committee is aware that some tribes do not believe there is need for enactment of legislation clarifying the Indian gaming issue. They contend that their sovereign right to operate and regulate gaming activities on reservations, free from state control, has been clearly affirmed in federal court decisions rejecting state challenges to such sovereignty. However, the Tulalip Tribes are concerned about repeated legal challenges to these rights, which further consume the limited resources of all involved.

The enactment of legislation will affirm and protect the sovereign right of Indian tribes to license, regulate and operate gaming activities within Indian country, in those states where the general public is not prohibited under state law from engaging in such activities, and will provide for uniform federal standards and regulation for the orderly conduct of gaming on Indian reservations. Further, it will establish a clear and concise policy direction on the Indian gaming issue, eliminate further litigation and serve the best interests of the Indian tribes and the public-at-large—especially, the patrons of Indian gaming establishments.

Turning specifically to S.902 we note that it bears a close resemblance to H.R.4566, the Indian Gambling Control Act, sponsored by Congressman Morris K.

Udall in the 98th Congress. That measure was the subject of Committee hearings, but failed enactment and died upon adjournment of the last Congress. Notwithstanding the similarity between these two measures, there are marked differences that concern the Tulalip Tribes.

A major concern of ours relates to section 11 of S. 902. That section authorizes the tribes to establish regional Indian gaming commissions to regulate gaming within Indian reservations. The commissions' jurisdiction would cover the same administrative geographical regions as are covered by Area Offices of the Bureau of Indian Affairs. Under section 11, certain regulatory authorities and responsibilities which are vested in each tribe would be vested in commissions by an affirmative vote of three-fourths of the tribes in each region. This would permit assenting tribes to invade the sovereignty of dissenting tribes—a proposition we strenuously oppose.

Viewed in another light, section 11 directs the Secretary to delegate to the commissions the regulatory powers conferred on him in S. 902. The Tulalip Tribes object to this delegation on the grounds that it abrogates the government-to-government relationship that has served as a centerpiece of federal-Indian relations from the very formation of the United States to present time.

The invasion of tribal sovereignty by the commissions through the "farming out" of Secretarial regulatory authorities, trust responsibilities and government-to-government relations would establish an extremely dangerous precedent which could reach far beyond the question of Indian gaming. We are fearful that such precedent could lead to the "farming out" of other vital Secretarial authorities and responsibilities. Under these circumstances, federal Indian relations would be profoundly eroded and the vital trust responsibility of the United States rendered meaningless.

In addition there would be, in our opinion, serious logistical problems in the establishment of an Indian Gaming Commission in the Portland Bureau of Indian Affairs Area where the Tulalip Tribes are located. There are 39 federally recognized tribes in that area, and I believe it is safe to predict that practically every one these tribes, certainly those engaged in bingo, would insist on being directly represented on the commission for that Area. In this connection, I am inclined to ask if it would be fair, or realistic, to subject the tribes who own and manage bingo games to regulation by a commission whose membership well might have no experience in the legal, fiscal and managerial complexities inherent in the planning, establishment and management of a sophisticated bingo operation. We think not. In the case of the Tulalip Tribes, we have a $4.0 million investment to protect in our Tulalip Entertainment Center that serves as the base for our bingo game and pulltab sales. We are convinced, therefore, that the regulatory oversight responsibilities must remain in either federal or individual sovereign tribal entities.

Mr. Chairman, I do not want the Committee to conclude that the Tulalip Tribes desire to be totally under the benevolant wing of the Federal Government because of our expressed concerns over the commission concept. On the contrary, we strongly believe in the sovereign right of the Tulalip Tribes to operate and regulate gaming within our Reservation. With respect to the latter, we do not believe this must be a total federal responsibility. We are confident of our own ability and right to regulate gaming. At the minimum, we believe this should be a shared tribal-federal responsibility.

We strongly support the goal and objectives of S.902, as well as H.R.1920 currently pending before the House Committee on Interior and Insular Affairs. We have tried to make clear our concern over the commission concept and are prepared to work with the Committee staff on an appropriate amendment that would provide for exclusion of the Tulalip Tribes from that provision if S.902 is enacted into law. Also, there are several other amendments we desire to offer on S.902, and will submit them in more detail to the Committee at a later date.

For example, in section 2 (2), we suggest changing "as a matter of public policy" to "as a matter of federal law, 'prohibit' "; and, in section 6 (a), we suggest changing "by state public policy as a matter of criminal law" to "where the general public is not free to engage in the activity at will." These changes would avoid a possible interpretation that is more restrictive than federal common law on the scope of state authority. The definition of Indian tribe should be restricted to federally recognized tribes because of the governmental functions involved.

Mr. Chairman, the Tulalip Board of Directors explored the establishment of gambling on our reservation as an economic option that held promise for providing employment of tribal members; that would generate income to supplement federal funds for the continued enhancement of our natural resource base and for our health, education, and other badly needed social programs such as child welfare, senior citizens, housing, health care, and alcohol and drug programs; and that would, over the years, lessen our dependence on federal funding to advance the social, economic and political well-being of the Tulalip Tribes.

Our studies, analyses and planning culminated with the opening of the newly constructed Tulalip Entertainment Center on June 13, 1983. This facility serves as the base of operations for our bingo games and the sale of pulltabs. The Bureau of Indian Affairs lent substantial sums in recognition of the importance of the facility in promoting tribal economic developments. Acquisition of furniture and equipment and start-up have been financed either from loans negotiated between the Board and private lending institutions in the region or through tribal savings. This modern facility costing approximately $3 million can accomodate over 1400 players in comfortable, well maintained surroundings with numerous amenities.

From the outset, the Tulalip Board of Directors was determined that the Center and its operations would be accountable to the Board. To achieve this objective, the Center has been structured within the tribal government. The Board resisted overtures from several "management firms" who offered to finance capital construction and cover start-up costs in return for a contractual arrangement to hire them as managers of the Center's bingo and pulltab operations. In return for their financial assistance and managerial services, these firms generally request a high percentage of a game's gross receipts over a specified number of years.

Rather than agreeing to a system that would drain income away from the Tribe, the Board sought out and employed an experienced person to serve as the Center Manager during an initial period. In this regard, we are pleased to inform the Committee that Mr. Wayne Williams, an enrolled member of the Tribes, relinquished his position on the Tulalip Board of Directors in 1984 to accept employment by the Board as Center Manager. He oversees an operation that is totally accountable to our people through the Board. To strengthen the concept of tribal accountability, the Center has implemented state-of-the-art computer techniques together with its strict systems of checks and balances to account for income and expenditures. The Tribes also retain an outside accounting firm to audit the Center.

The Board believes it has exercised its sovereign powers in a responsible manner in the establishment of gaming activities on the Reservation as an economic endeavor. We further believe that our approach will guarantee maximum benefits for our membership from the Center's income, following payments for debt service and operating expenses, which has been dedicated to tribal government operations.

Unfortunately, the State of Washington questioned the scope and extent of our sovereign powers to operate and regulate gaming on the Reservation free from their control and filed an action against certain Tulalip tribal government employees in state court on October 6, 1983. The State alleged that its restrictions on other bingo games to three days a week and $0.25 per pulltab were applicable to tribal games. The Tribe maintains that the state laws are regulatory in nature and of no effect in Indian country. The case was removed to the federal district court which upheld the tribe's immunity from state bingo laws. The court ruled, as had other federal courts, that the essential test of whether the bingo laws applied was whether the public was free to play bingo at will. If so, the state laws were not "prohibitory" as a matter of federal common law, even though the state codified those laws as "criminal" laws and argued that the tribal games violated state public policy. The state's appeal has been dismissed as untimely, and the Tulalip decision is now final and binding on the parties. The State of Washington is trying to relitigate the issue, as an amicus curiae, in an Indian bingo case pending in California.

With two-years' successful operation of the Center behind us, we believe it is important to review with the Committee the economic and social benefits that have accrued to the Reservation people and to the surrounding non-Indian communities.

At the present time, the Center provides full-time employment to 85 people including 59 tribal members. The annual payroll is approximately $1,200,000. We expect it to reach $1.3 million in FY85. The bulk of this income is spent by the wage earners in nearby off-reservation, non-Indian communities for consumer goods and services. We take great pride that 59 tribal members are gainfully employed in the Center.

A review of our employee files shows that 42 of our present staff were unemployed or underemployed prior to being hired by the Center. Of the 42, twenty were receiving some form of public assistance. In addition to the tribal members employed, we have 14 non-members who are married to tribal members, so that a total of 73 households that include tribal members are directly benefiting from employment at the Center.

Our net income for FY84 was $592,018. Generally, income has been allocated or expended as follows: an annual administration fee of $120,000 to the Tribes' General Fund (some of these funds are used to supplement various social programs for which federal funds are not sufficient to meet the Reservation needs); $350,000 to the Tribes' Reserve Fund (our portfolio includes diversified investments to assist the financing of other tribal economic development ventures); and $700,000 to retire debt service on private and public loans of some $4.0 million used for infra-structure, construction, and start-up. In 1984, we spent $884,000, excluding depreciation, to purchase goods and services from surrounding non-Indian communities.

Given the multiplier effect of the Center's annual payroll and the purchases of goods and services associated with its operation, the Center has become a valuable economic asset to the reservation and tribal members and to the surrounding non-Indian communities and business enterprises.

From June of 1984 to June of 1985, our patrons numbered a little over 300,000. We would like to point out to the Committee that we comply with the requirement of the Internal Revenue Service that winnings of $1,200, or over, be reported. In FY83 we reported to IRS prize winnings of $403,000, and in FY84 we reported $384,000.

The Center has served as a positive social influence in the Indian and non-Indian communities by providing its patrons an opportunity to participate in a fair and efficient high stakes bingo game in a comfortable atmosphere. Our satisfied clientele, which includes many senior citizens, look upon the Center as the site of "their game".

Mr. Chairman, there is ample evidence to confirm that a segment of the United States population includes bingo enthusiasts. The popularity of bingo speaks for itself. We understand that it is conducted in virtually every state. We have responded to that need and demand through the Tulalip Entertainment Center. Make no mistake in the fact that we operate the Center as an economic enterprise, but, in doing so, we have had a positive social impact on the bingo enthusiasts in our area—who are going to play bingo one way or the other, and are free to do so on a daily basis as a matter of state law.

I now want to address two issues that cause concern to members of Congress: (1) the alleged infiltration of organized crime into the bingo games conducted within Indian reservations; and (2) the impact of tribal games on nearby charitable and non-profit games. With respect to the organized crime issue, United States Department of Justice officials, and some state and local officials, persist in alluding to the potential for skimming of profits or for "laundering" of money in the Indian bingo games. Please be assured these officials have no monopoly for such concerns. Indian people want their games to be free from such influences.

If Justice officials possess hard evidence of criminal infiltration in a specific Indian bingo game, we urge them to utilize every resource and legal authority to remedy the situation and to do so immediately, working cooperatively with the Secretary of the Interior and the affected Indian group.

The Committee should be aware that many of us who own and operate bingo as an economic enterprise have installed well designed systems for monitoring transactions, conducting audits and assuring continued access to all records as a safeguard to any wrong-doing. We extend an invitation to the Committee and staff to make an on-site visit to the Tulalip Entertainment Center to review our internal control system.

Some managers of charitable and non-profit bingo games allege that Indian bingo games have had an adverse impact on their games. This may be true in a few instances; however, in Washington, for example, bingo operations such as Big Brothers have earned, in the past, and continue to reap, large millions of dollars every year from its bingo games. We wish to point out to the Committee that Indian bingo is conducted by us as a form of voluntary taxation to raise badly needed revenue for the operation of our government, the provision of funds for programs no less worthy than those of non-profit games, the creation of job opportunities and job training, and tribal economic development. Tribes and their members are trying to address the severe economic and social problems on Indian reservations. As governments, they have a sovereign right to operate and regulate bingo exclusive of state jurisdiction. Concerns for any competitive edge over state-sanctioned games cannot justify the infringement of these tribal exercises of sovereignty.

We are concerned over rumors that the Congress or the Administration may propose that limits or ceilings be imposed on the jackpots offered in Indian bingo. We are strongly opposed to any such proposal on the grounds that it would represent an unwarranted erosion of tribal sovereignty and undermine tribal and federal economic development policies. If such a proposal were to be adapted as public policy, it would rob Indian tribes of an economic development alternative that is now beginning to produce jobs on reservations, provide tribes with additional financial resources to support other economic development and to stimulate non-Indian economies by the multiplier impact of the dollar. These positive attributes of Indian bingo would be lost through limits on jackpots since it is unlikely a state would raise the jackpot limits for charitable and non-profit bingo.

Mr. Chairman, the Tulalip Tribes of Washington recognizes the need for enactment of legislation to clarify and resolve the legal uncertainties surrounding Indian gaming within Indian reservations. Such legislation would give meaning and substance to President Reagan's Indian Policy Statement of January 14, 1983, in which he clearly states the need for the tribes to develop mechanisms that will provide jobs and income to reduce their dependence on the Federal Government. Bingo provides an alternative source of tribal revenue and increased financial independence.

Through the exercise of their unique sovereignty, tribes have begun to use income from bingo to support basic functions of government, to formulate long term economic development plans and to generally address the economic hardships of their members. We urge this Committee, through enactment of appropriate legislation, to preserve this valuable tribal sovereign right and its associated economic benefits. Mr. Chairman, we would support enactment of S. 902 if amended as we suggest.

Senator MURKOWSKI. Mr. Chairman, I wonder if I may make an inquiry from the standpoint of a matter of interest, whether the originators of S. 902 intended to include recipients under IRA's in the State of Alaska and regional corporations and village corporations under the Alaska Native Land Claims Settlement Act, if either of those are included in those proposed legislation?

Mr. TAYLOR. Senator, I don't know what the intent of the draftsmen was. I have read the definition of Indian tribe. I think that that would be sufficiently broad to include Alaskan Natives, but the definition of Indian country speaks only of reservation lands or lands held in trust for restricted status. In the State of Alaska I think that would only include the Enid Island.

Senator MURKOWSKI. Thank you.

I would appreciate making a formal request of the counsel for a written clarification on that directed to my attention.

Thank you, Mr. Chairman.

Mr. TAYLOR. I have a couple of questions.

Both the Morongo Band of California and the Tulalip Tribe in Washington, both of your testimonies indicate a substantial inroad on unemployment in your respective reservations, bringing it down from an unemployment level, I believe, at Morongo of 64 percent and I think at Tulalip it may have been almost the same. What impact has this had on the Federal expenditures in your reservation? Can you give us figures on the general assistance figures that were being paid before you went into your operations and what they may be now, or any other Federal impact?

Mr. JONES. Well, Mr. Chairman, with our tribe we can enter those later to be correct figures, but the Federal funding is drying up quite a bit. This is what we are trying to pick up on, the Federal funding. We can get those figures to you later—not only what is happening at Tulalip with the bingo, but we have another big hotel-motel complex coming in, and we're training 25 tribal members to work in this, sir, including the cooks and chefs and everything. So it is really a good spinoff.

Mr. MARTIN. We don't have that information right now.

Mr. TAYLOR. If each of you could supply that for the record, I think it would be helpful in understanding.

Mr. MARTIN. OK.

[At the time the hearing went to press, no information had been received.]

Mr. MARTIN. I would like to make one more comment. It seems that, along with bingo, there are other developments that do come. As the chairman from Tulalip mentioned, they have a hotel and I think a restaurant on some of their plans. That seems to be what we are looking at right now, too.

What has happened with the bingo, it is attracting outside investors that would like to lease land that the tribe has along Interstate 10 and develop this property.

Mr. TAYLOR. I have no further questions.

Senator Murkowski?

Senator MURKOWSKI. I have no questions, Mr. Chairman.

Mr. TAYLOR. Thank you.

I want to call the witnesses from Acoma Pueblo, but I would like to have a show of hands of people who have to make airplane connections.

We have witnesses from Acoma Pueblo.

Kirke Kickingbird, I understand that the person with you has to leave at 2 o'clock. Why don't you come up and participate in this panel.

Those of you who have plane connections, if you would tell Irene, we will get you on the list here.

Kirke, since you or your associate has to leave at 2 o'clock, why don't we start with you, and then Mr. MacDonald and Mr. Garcia, we can come back over to you.

I understand you have to leave at 3:30.

STATEMENT OF KIRKE KICKINGBIRD, PRESIDENT, KICKINGBIRD ASSOCIATES, VIENNA, VA, ACCOMPANIED BY GARY COOPER, VICE PRESIDENT, S. LACHMAN & SONS, BALTIMORE, MD

Mr. KICKINGBIRD. We do have a full and complete statement that we have submitted for the record. Let me highlight some of the points that we wanted to make out of this material.

You, of course, are personally familiar with a lot of our Federal Indian law trade programs. In recent years we have expanded into economic areas, including bingo. We have used the same care and efficiency in conducting that training.

In our experience in working with tribes, including Acoma, in training—tribes can be trained to run their own bingo operations in anywhere, depending on our activities and the level of speed at which they want it done, 30 to 10 days. We bring with it a system for accounting, both for materials and cash, which the tribes do run successfully.

We also are brought into places like Tulalip to finetune the operations and make suggestions about areas to improve the economy.

With me is Gary Cooper, my partner in this training endeavor. He runs a bingo supply house, manufactures equipment, and through his engineering background has designed some computer programs to forecast net profits based on income variations, operation by days of the week, fixed expenses, daily expenses, daily payouts. They appear as the last item on our statement.

The main point of that is there is a great deal of regularity about bingo. As a consequence, it makes it easy to track what is happening, where the money is going, where the inventory is going, and what the staff is doing.

I would like to have Gary talk about some of the vulnerabilities, and that is in the area of some of the contracts we have seen related to padding of expenses. That is the great problem for tribes.

Mr. TAYLOR. Thank you.

STATEMENT OF GARY COOPER, VICE PRESIDENT, S. LACHMAN & SONS, BALTIMORE, MD

Mr. COOPER. One thing we want to get across is in the report but not specific. Although the gaming commissions and a lot of people, especially management companies, would like to lead you to believe—and this is bingo-specific because I really deal in bingo and not as much in other gaming—bingo is not that difficult a business. It is a very easy business to keep tabs on. There are very few variables that have to be tracked.

In forms of padding or laundering or skimming, they are all things that, with the proper financial management system, can be easily uncovered and tracked in any bingo of any size.

We have audited and we have started up several bingo games through our training and technical assistance. All these things have been properly tracked. As a matter of fact, some inadequacies have been picked up and some irregularities have been picked up through the systems in several of the places.

It is not that hard a business, bingo itself, and we speak about bringing organized crime and those types of influences in. The main reason they would come into these would be for skimming and for padding and maybe even for laundering. Well, it is very easy to keep track of what the gross revenues of bingo should be. It stays very constant. It stays constant on a per-person basis. It can be almost spot checked just visually and come into a ballpark figure of what it should be. Therefore, laundering, where they would have to try to increase the revenues, could be monitored and so could skimming. On the flip side of it, it can be very, very easily monitored in bingo.

Padding of expenses, another area that can be very, very easily monitored by being compared to other suppliers. You can track the amount of paper that is used on a nightly basis. In our financial accounting we do that.

Budgets such as startup budgets—you see some startup budgets in a lot of the management contracts of $70,000, $80,000, $90,000, and it can be shown in some of our budgets that they should be half, maybe even less than half. As a result, a lot of management companies use other things other than net revenues in order to take money out of these ventures. They are all trackable.

It is very easy to say, "I'm going to put up an $800,000 building but charge $1.5 million or $1.8 million for that building." It reduces net revenues drastically and yet looks like the tribe is getting its fair split. All these things can be very easily monitored.

We feel that a commission probably should be set up, probably national to keep it uniform. We feel that in our experience in training tribes—the Acoma example where they are running a very successful, totally independent, tribally run bingo with very little training—we've shown there and at a couple other bingos that there is the expertise on the reservations tribally with a little bit of training to run them themselves. There are scenarios where the management contract might be more preferential to a specific tribe, but by regulating it, it can be kept very, very—with very, very close tabs.

We feel that there should be some commission for those tribes, those specific examples where there are problems, where maybe they need outside help in order to give them some hand to hold or some outside organization to help them regulate problems, but on the whole I think that a commission should be set up but it should be tribally run, maybe with some outside other help, maybe from the Secretary or some other places.

Mr. **Kickingbird.** Clearly, now tribes have developed the expertise and the experience to run their own operations, and the Commission concept would allow them to draw on one another's expertise.

Mr. **Taylor.** You're referring to an Indian Gaming Commission?

Mr. **Kickingbird.** Yes.

Mr. **Taylor.** I would just like to note for the record that in testimony before the House Interior and Insular Affairs Committee last year both the Department of Justice and the Department of the Interior, while not actually endorsing the legislation that was in front of that committee, both of them spoke of the possibility of the development of an Indian Gaming Commission as a mechanism for regulating the activities. Neither one of them seemed to want to take the responsibility into their own halls.

Mr. **Kickingbird.** No.

Mr. **Cooper.** I think a lot of the tribes have been regulating their own bingos. In a lot of our audits, a lot of our technical assistance and reviews, we found that a lot of the tribes are, in fact, through commissions, through management, regulating their own bingos now and doing a good job of it.

Mr. **Taylor.** Do you find the quality of that regulation comparable with that that the States have? I assume that you have worked with State gaming commissions, too.

Mr. **Cooper.** Oh, yes. Yes, I work with a lot of nonprofit organizations, hundreds of them in this area. I would find them to be as good, if not better, than the self-regulation of a lot of the State-run bingos.

Mr. **Taylor.** Thank you.

[The prepared statement follows. Testimony resumes on p. 315.]

PREPARED STATEMENT OF KIRKE KICKINGBIRD, PRESIDENT, KICKINGBIRD ASSOCIATES

Mr. Chairman and Members of the Committee:

I am Kirke Kickingbird, President of Kickingbird Associates, a consulting firm working in the field of Indian affairs, and with me is Gary Cooper, Vice-President of S. Lachman and Sons, a 65 year old business specializing in bingo and carnival supplies. Mr. Cooper is one of my associates in the work I do in training tribal governments to start and run their own bingo games and in the work we do in responding to tribal requests to evaluate their bingo operations and contracts. We appreciate this opportunity to discuss the issue of Standards for Gaming in Indian Country.

My testimony is divided into three parts. The first part provides details about our experience in bingo games run by tribal governments. The second part discusses general problems that we have observed concerning Indian bingo. The third part specifically addresses the provisions of S. 902.

PART I

I want to explain why our testimony might be helpful to the Committee while they are considering this topic.

My company, Kickingbird Associates, provides a wide variety of training and technical assistance to Indian tribes and Indian organizations. I also have a private law practice and run a non-profit legal research organization called the Institute for the Development of Indian Law.

I am most closely associated with training programs on topics such as Sovereignty, Jurisdiction, and the Federal Indian Trust Relationship. In recent years tribes have asked me to design training programs to use tribal powers to assist in economic development including management of bingo operations by tribal governments.

Over the past 16 years I have worked almost exclusively in the field of federal Indian law and Indian affairs. I have worked for the Bureau of Indian Affairs, the Congress, the U.S. State Department as well as U.S. and Canadian Indian tribes.

My training programs for tribes are usually directed at tribal legislatures or tribal administrative staff. Acoma Pueblo in 1983 requested assistance in training tribal members how to run their own bingo game without using a management company.

It was a request that intrigued me and my associates because most requests for assistance that we receive do not involve as practical an application of our instruction. Since tribal complaints about the bingo management companies were beginning to surface, we were intrigued by the question of how we could help a tribe which wanted to run its own operation.

After three months of planning we did develop a course that successfully trained Acoma tribal members how to run a bingo game as a business. The Acoma Pueblo game opened at the end of October of 1983.
As part of the management system for the Acoma Pueblo bingo game we

designed an administrative and financial control system 1) which serves to insure the Pueblo government of a true income count and tracks inventory and 2) which protects the bingo hall workers from accusations of skimming cash or pilfering supplies. Because of our work with other tribes on bingo matters we have continued to refine the system for use with other tribes.

The questions that had been raised about management companies which concerned Acoma Pueblo included questions about the sources of funds by which the management companies were financing the Indian bingo operations. In order to avoid problems about the source of funds for their bingo hall Acoma Pueblo sought and recevied financing for its bingo hall through a loan from the First National Bank of Albuquerque. Acoma continues to operate its own bingo game under tribal control and management.

Last year my training team members and I taught two general seminars on bingo issues and provided operations audits for the Red Cliff tribal bingo and the Tulalip Entertainment Center bingo. My associates also reviewed operations at the Bad River bingo and at the tribal chairman's request made a preliminary review of a proposed contract offered to the tribe for a 3,000 seat hall. We taught two tribally specific seminars last year to the Wichita, Caddo and Delaware Tribes and to the Kiowa, Comanche, and Apache Land Use Committee who were considering offers regarding bingo. Beginning on April 10 of this year we interviewed, selected and trained the staff of the Kiowa, Comanche, and Apache Bingo at the Ft. Sill Indian School to operate their own bingo. Ft. Sill Indian School Bingo opened on May 3.

In our work my associates and I have studied the various management contracts being offered to Indian tribes and have suggestions about the shortcomings of those contracts from a tribal government point of view. I believe we can suggest alternative management plans and contract provisions which would assist the tribal governments, the Congress, and the Interior Department in dealing with bingo project development and operation.

Gary Cooper, who is appearing with me as a witness, has assisted me and my staff in providing technical assistance and training on bingo to Indian tribes. He is Vice President of S. Lachman and Sons, one of the largest East coast bingo suppliers whose hundreds of clients are mostly non-profit organizations. He designs, manufactures, and holds electronic patents on bingo equipment. Although in his mid-thirties he has nearly twenty years of experience in the bingo business. I've enclosed additional information about his background. He has written a net profit forecast for computers that help us explore variable cost, staffing, days of operation and prize situations for tribal bingo operations. An example of such a forecast is appears as Appendix D to this testimony.

Because of our practical experience I believe that my associate, Gary Cooper, and I can provide information related to financing, development and operational costs, cash and inventory tracking, security needs, as well as commentary on the legislation about areas which we feel need more attention or change. Our testimony will be directed toward the technical and practical aspects of bingo games.

PART II

Although the work my associates and I have done has been with specific tribes we have followed the development of the Indian bingo task force, collected samples of contracts offered and accepted by tribes, collected ordinances, conducted research on bingo game marketing, design, operation, and management, and conducted training for tribal government officials and staff.

Based on the research materials available to us we have reached these conclusions about the contracts offered to tribes.

Excessive Profits

The contracts provide excessive profits to the management companies. The contracts typically offer to split the net profits with the tribes on a 51%/49% ratio. The 51% share goes to the tribe. Naturally, the tribes counteroffer and that split can end up with 60% going to the tribe. The tribes do not always end up with the largest share of the split of income.

Attached to this statement as Appendix A is a contract dated April 26, 1982 between the Citizen Band Potawatomi of Oklahoma and Enterprise Managment Consultants, Inc. which provides in paragraph 7 that Enterprise Management Consultants shall receive sixty-five (65%) of Gross Profit from game sales and eighty-five (85%) of Gross Profit from Food Concession Sales.

Gross profit from game sales is defined in the Potawatomi agreement in Paragraph 1.(B.) as "all revenues derived from the sale of bingo cards, as well as all revenue derived from any other game or games of chance, less and substracting therefrom payouts, taxes and bank."

Gross profit from Food Concession Sales is defined in Paragraph 1.(C.) as "all revenues derived from the sale of food items, beverages, souvenirs or of any other merchandise, less and subtracting taxes."

Correspondence dated January 25, 1982 between the president of the management company, John Caldwell, and the Potawatomie tribal administrator, John Schoemann, estimated the first year's revenue at $1,404,000 for bingo and $145,600 for the snack bar.

Padding of Expenses

The management contracts with tribes generally leave the management companies in control of operations including expenditures and disbursements. When the contract provides for the tribes to share in the net profits, it is to the benefit of the management companies to maximize costs and reduce the net profits if the management companies can find ways to benefit from the increased costs. We'd like to present some of examples of how a management company might benefit from higher costs.

A budget that came to our files through Acoma Pueblo apparently originated as part of a proposal to the Papago tribe and showed costs for a 900 seat bingo hall of 12,000 square feet. It appears as Appendix B to this testimony. We were given only the budget itself which does not identify the company making the offer to manage a bingo hall at Papago. We also do not know if the offer was actually entertained by the tribe. One item in the budget showed "Furnishing (including Bingo equipment)" at a figure of $73,000.

My associate Gary Cooper estimates the cost of furnishing a hall of this size at $30,000 to $35,000. This would consist of the following items: 1 blower, 4 light boards, 4 monitors, 1 camera, 150 tables, and 900 chairs.

Bingo halls are not noted for their sumptuous decor. Drapes, paintings, and leather couches are not the items needed for a bingo hall. The furnishings merely need to be functional. We are puzzled by what the other half of the $73,000 of furnishings would be. It certainly brings to mind the suspicion that the budget item for furnishings would be padded.

Building costs are another area which raise questions about padding of costs. At the Gila River Tribal offices I discussed with tribal staff building costs. Staff felt that a steel building of the type often used for bingo halls would cost between $20 to $25 per square foot. Some of the offers that they received included estimates as high as $30 to $35 per square foot. If the tribe agreed to the charges at the higher, rate the management company could be making another $10 per square foot on the building markup.

Another area where tribes are vulnerable is the padding of bingo paper supply costs. Since the management companies generally control expenditures, they can purchase from any source they please including a company that they have created to sell bingo supplies. The result is that instead of purchasing from a third party at a bulk rate or volume rate discount a management company could purchase supplies and equipment from its own company at a premium rate thereby increasing the profit to itself from the bingo operation. If the split with the tribe is based on a net profit basis the management company gets to make its money from the bingo hall and supply purchases too.

Another area of tribal vulnerability in the area of costs which would reduce the net profit is the matter of salaries. If the management company is free to control salaries they can set high management salaries and further reduce net profits and the share that the tribe receives.

In the Papago budget there is an item for annual traveling expenses of $48,000. The amount sounds as if it is a little expensive for a commute between Tucson and San Xavier. It has the effect of making one wonder whether the travel was intended to subsidize management's trips to other tribes to close another Indian bingo hall contract.

Skimming and Accounting Systems

The most difficult area in an all cash business is cash control. Some tribal contracts such as the Potawatomie contract in paragraph 19 requires a polygraph test for personnel counting the gross receipts.

The cash control system that we set up for Acoma tracks the bingo purchases, the exchange of moneys between employees, as well as the exchange of inventory items, and payouts to winners. The Acoma Pueblo bingo staff told us the cash and inventory control system revealed a problem with certain employees who were quietly relieved of duties.

The cash and inventory control system does not require any assistance from a polygraph test. It seems to us that if we can design a system to track cash and inventory others could also. It further seems to us that reliance solely on a polygraph device rather than a records system has the result of obscuring the accounting. We don't know if any management companies are guilty of the practice of skimming but we do believe any management company that does not use a records system to track cash and inventory is not following proper accounting procedures.

A polygraph test without a record system may assist you in determining if an employee is skimming but it does not tell you how and where unless the employee confesses. To foreclose weaknesses in your accounting system you need to know how the skimming was accomplished. Skimming may not consist of merely pocketing money. There may be collusion between an employee and a player. A record system could reveal the fact that over a period of time the same employee keeps making the same payout to the same player with the player and the employee splitting the prize money paid out.

The polygraph test may reveal if an employee is involved in questionable activities but it does not tell whether the management is involved in the same practices. The polygraph test could turn out to be a way for the management company to discourage employees from skimming because the employee sees the management company skimming and cheating the tribe.

Gary Cooper estimates that 20 to 25% of the tribes share could be lost to skimming and the losses could easily be higher. The only requirement that the skimmer needs to avoid easy detection is to take the same percentage out of the income every day that a game is played.

A cash and inventory control system also makes it easy to overcome the problem of whether or not organized crime is laundering money through a bingo operation. The cash register tapes, the accounting forms, a watch on the admissions desk to determine the approximate amount of the average expenditures by each player, and a count of the number of players will quickly tell you if the income was $7,000 per night or $14,000 per night. It doesn't take a crystal ball to determine the real income, but it does take diligence, a system, and some common sense. Control systems should be built into any contract with a tribe in order to insure that the tribe gets a true income count. Both laundering and true income could be revealed by such a system. Acoma has been successfully using our version of such a system for two years now.

The cash and inventory tracking system also also provides sales data about which items are most and least poplular and which personnel are most productive. This information is essential to conduct the most efficient business operation.

Length of Contracts

Contracts are of an excessive length. The contracts that we have seen are too long for the services that a managment company provides a tribe. A document entitled "Sample Bingo Management Contract" appears as Appendix C to this testimony. Under this contract a company called Indian Country, U.S.A., Inc. is engaged for fifteen years at paragraph 2.(A.). The Potawatomie agreement at paragraph 16 provides for a term of 20 years.

Depending on the intensity of the instruction and the amount of duties my associates undertake we can teach tribal members how to run a bingo game in one to three months. The only other essential item that management companies are providing is the financing. The focus of the term of the contract should relate to what kind of return a management company gets on its investment.

Waiver of Sovereign Immunity

Paragraph 5 of the Indian Country, U.S.A, Inc. sample contract addresses sovereign immunity from suit. Tribes should avoid a general waiver of sovereign immunity and limit any waiver to the issues of the bingo contract.

Employment

Despite glowing pictures of employment opportunities for tribal members some tribes don't find the employment opportunities substantial. The complaint from some tribes is that the employment opportunities are overstated. Tribal members seem to get the lowest paying jobs with the least responsibilities. An example of testimony of this type is the June 19, 1984 testimony from the Pascua Yaqui chairman on H.R. 4566. Tribes should make provision in the contract that tribal statutes and ordinances on tribal and Indian preference in employment will be followed.

Lease Mentality

For the last century Indians have been sold the idea that they are incapable of conducting economic activities themselves. During the early part of this century Indians did lack the experience to run farms and ranches and other enterprises. Indians still suffer from a lack of available capital to pursue economic development. Indians still lack confidence about their ability to operate in the economic arena. So at the end of the 20th century Indians still suffer from the lease mentality, the belief that Indians cannot run an enterprise, and need to lease out the opportunity to non-Indians so that the Indians at least can receive rental income. The management companies are all too happy to encourage the idea that Indians cannot operate a bingo game themselves. The management companies encourage the tribes to believe that bingo is extremely difficult to manage and that unusual skills are required to cope with a bingo operation. The lease mentality makes the tribes the perfect victims for the management companies contract offers which are weighted to favor the companies. Our experiences is that tribes can and do run their own bingo games with great success.

Contract Recommendations for Tribes

As a result of our review of the tribal experiences we make these recommendations about what tribes should strive for as their goals in a bingo contract.

1. Tribal governments should recognize the value of the tribes ability to have high stakes bingo games. The management companies as the buyers of the right have sold the tribes on the idea that it is a buyers market. The fact that the games can be held on tribal lands is the most significant factor about high stakes Indian bingo games and it should be recognized as the largest investment factor involved in Indian bingo operations. Its value should be recognized through an increased share of the income from the game.

2. The tribe needs the abilty and mechanisms to make bingo management accountable for the revenue derived from the game. Accountability needs to be increased so the tribe knows the true income. An annual audited statement is not adequate and an unaudited monthly report is not adequate. The tribe needs access to the raw records without prior notice to the management company.

3. The management contracts should have shorter terms of duration. The management contracts don't bring essential skills to the bingo operations. Most of the skills can be learned in 30 days or less. The management contractors bring financing. The return they gain on their investment is not worth a 10 or 15 or 20 year contract. The return even for five years is extraordinary.

4. The tribes should seek a return of income at the same time as the return of income to the management company begins.

5. Tribes should not waive their authority. There should not be any general waiver of sovereign immunity. Taxing authority should be relinquished only for a limited period as an incentive and be predicated on other provisions such as the return of income. Tribes should have an acknowledgement that their authority on such issues as employment ordinances are applicable. It could be a general provision that the management company acknowledges the governmental power of the tribe with respect to regulatory and licensing and taxing authority.

6. Tribes should try to retain their option about renewals or extensions of management contracts.

PART III

This section of our testimony is directed at specific provisions of the Senate bill.

S. 902

As a long time proponent of Indian Sovereignty and the powers of tribal government I am pleased to see the provisions of Section 11 which promote self government of Indian tribes and the self regulation of bingo games on reservations and lands subject to tribal jurisdiction through the use of Regional Indian Gaming Commissions. By this date it is clear that the Secretary of the Interior and Interior Department personel don't necessarily have any greater expertise in the area of Indian bingo than do the tribes and it is doubtful that earlier involvement by the Secretary and the Department in bingo matters would have prevented problems from arising for tribes that are having difficulty with their management contracts. Problems can be addressed and assistance can be provided by the tribes who are successfully operating their own games through pooling expertise under the commission concept.

Section 6.(a) provides that gaming activities are legal on a reservation except where prohibited by Federal or state law. It is my understanding that state law is applicable only because the provisions of the Organized Crime Control Act found at Section 1951 of Title 18 use state law as the criteria for the federal law violation. I would like to suggest that the language of the bill or the committee report make clear that States do not have some inherent authority over Indian affairs. I believe that it might reduce future conflicts on the powers of Indian tribes to reaffirm the basis premise that the States only have a role in Indian affairs through a specific statutory grant of powers from the Federal government.

Section 6.(b) at subsections 1 and 4 makes reference to proprietary interests. We would suggest that the definitions in Section 4 include a description of what is meant by "proprietary interest" in the context of bingo and this bill.

Section 6.(b) at subsection 2 makes reference to net revenues. We suggest that a definition of net revenues be included in the definitions section and that the report on this bill discuss how one arrives at the net revenues. As we indicated in our discussion in Part II management companies can take a number of steps to control expenses and disbursements and create a series of profit centers for themselves with the result that net revenues are reduced. As part of the control mechanism we would suggest that the ordinances also require that the tribe approve an annual operating budget for the bingo operated by a management company with provision for a quarterly review and adjustment of costs under that budget.

Section 6.(b) at subsection 3 makes provision for annual independent audits by the tribe. The tribes need monthly statements from the management company as well and the tribes need access to raw financial records without notice so that they can conduct spot check audits. The potential for an unannounced audit should create circumstances which will result in sound accounting and record keeping procedures by the management company. Contracts which provide for an annual audit to be conducted and presented to the tribe have little value in this all cash business. If the management company presents doctored records to the best certified public accountants in the United States and swears up and down that the records are true and complete and accurate the managment company can get a reputable audit by a reputable firm. That audit does not necessarily reflect the reality of a cash operation.

Section 6.(c) provides for licensing of games by individuals or entities other than the tribes pursuant to tribal resolution. We fully agree that only tribes should run and benefit from high stakes bingo. What is not clear is what effect this section has on current games operated by a management company. This section could be interpreted to mean that management companies can only run the same kind of game in Indian country that they could operate in a state. It should be clarified so that tribes know whether a managment company can run a high stakes bingo. If the section is intended to restrict high stakes games to tribes only, it raises questions as to what effect the legislation will have on a tribe such as Sac and Fox whose philosophy is that tribes don't run businesses, they only license, regulate, and tax them. It could also offer the opportunity for tribes to revise contracts with management companies where it is clear that the management companies have taken advantage of the tribes.

Section 6 should probably have a provision that requires that tribal officials have reasonable access to the daily operations and the right to verify daily income. In a cash business these provision are essential to protect tribal interests.

Section 7.(a) provides for a percentage of net income to the contractor up to the amount of 49 per cent. We think it would be useful to explore why the management company should receive a return this large. If the justification for the amount of the return is financial investment, we think it would be best to separate the financial return from the return for the manangement services.

The bill or the report should clarify what is considered a fair and reasonable rate of return so that the Secretary, the Commission, the tribes and the courts will have some basis for making a judgment on these matters.

We would like to suggest that consideration be given to the issue of how the start up phase of the regional commissions would be funded. So no commission would exist to administer and set the assessment among the tribes federal funding may be required to handle the organizing process.

We would also like to suggest that consideration be given to reducing the number of Indian Gaming Commissions. The costs for travel and per diem of nine representatives from 11 Bureau of Indian Affairs areaswill be substantial. The costs for staff and technical assistance will be substantial. To reduce staffing costs, commission operating costs, and assure availability of personnel versed in the technical aspects of bingo it may be necessary to reduce the number of commissions. This is one question that could be addressed by various witnesses in subsequent hearings.

The emphasis in this bill seems to be on ways to support tribes in generating revenues and effectively regulating tribal gaming operations with an emphasis on sound accounting and tribal control and the funding of essential governmental services of Indian tribes. In our work we emphasize the role and responsibilities of tribes in self-government and are pleased that the bill embodies that concept.

This brings to a close our prepared comments. We offer our assistance to the members of the Committee and the staff in the development of the technical aspects of this legislation. We appreciate this opportunity to appear before you.

Appendix A

MANAGEMENT AGREEMENT

THIS AGREEMENT, made this 26 day of April, 1982, by and between the Citizen Band Potawatomi Tribe of Oklahoma, an organized tribe as defined in Section 16 of the Act of June 18, 1934, as amended, (hereinafter referred to as PRINCIPAL) whose notice address is Route 5, Box 151, Shawnee, Oklahoma 74801, and Enterprise Management Consultants, Inc., an Oklahoma corporation (hereinafter referred to as AGENT), whose notice address is 231 South Peters, Norman, Oklahoma 73069.

1. Definitions.

A. "Bingo Operation", as used herein, means a game in which participants purchase one or more cards which are marked off into squares with each square being designated by number, letter, symbol or a combination thereof that may or may not be identical with the players covering squares as the operator of such game announces the number, letter, symbol, or combination thereof corresponding to the system used designating the squares, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of squares upon the card being used by such player, or any other game of chance which is not in violation of federal laws of the United States of America or the Citizen Band Potawatomi Tribe of Oklahoma.

B. "Gross Profit from Game Sales", as used herein, means all revenues derived from the sale of bingo cards, as well as all revenue derived from any other game or games of chance, less and subtracting therefrom payouts, taxes and bank.

C. "Gross Profit from Food Concession Sales", as used herein, means all revenue derived from the sale of food items, beverages, souvenirs or of any other merchandise, less and subtracting taxes.

D. "Payouts", as used herein, means the money value of the prize of the game given, at the conclusion of each game played, to the winning player or players, whether paid in cash or the actual sum paid for merchandise.

E. "Bank", as used herein, means a sum of money advanced by AGENT for the sole purpose of making change to accommodate customers.

F. "Taxes", as used herein, means any tax imposed on game or food concession sales or both, including without limitation license fees, permit fees, sales tax, excise tax or any other tax imposed on said operation or the realty by the government of the United States of America, the State of Oklahoma, the City of Shawnee or Pottawatomie County; but, specifically excluding income taxes.

G. "Commencement Date", as used herein, means the date upon which AGENT opens to the general public said proposed building facilities and commences said Bingo and Food Concession Operation, or 120 days from and after the Secretary approves the land lease set forth in paragraph 10 hereof, whichever occurs first.

H. "Liberty Prime Rate", as used herein means that annual rate of interest charged to its most credit worthy customers by Liberty National Bank and Trust Company of Oklahoma City, Oklahoma.

I. "Tribal Lands", as used herein, means, tribal lands as defined in Section 131.1 of the Code of Federal Regulations, Title 25-Indians, and any amendments thereto relative to Business Leases and Permits on restricted Indian lands which by reference are made a part hereto.

J. "Secretary", as used herein, means the Secretary of the Department of the Interior of the United States Government or his authorized representative.

2. Appointment. PRINCIPAL hereby appoints AGENT, as PRINCIPAL'S sole and exclusive-AGENT, to manage, as a business enterprise, for and on behalf of PRINCIPAL, a Bingo Game and Food Concession Operation on the hereinafter described Tribal Lands.

3. Acceptance. AGENT hereby accepts such appointment and agrees to use its best efforts in the performance of same.

4. Building Improvements. It shall be the sole responsibility of AGENT, at AGENT'S sole cost and expense, to construct, equip and furnish a building together with parking and landscaping on said premises. In this regard, it is contemplated by the parties hereto that said building improvements will consist of a prefabricated metal structure of rectangular shape and shall be designed to accommodate approximately 750 customers at any one time, hereinafter referred to as "DEVELOPMENT PLAN", the cost of which shall not exceed the sum of $250,000.00, unless AGENT agrees to waive such cost ceiling.

5. Right to Approve DEVELOPMENT PLAN. PRINCIPAL reserves the right to review for approval said DEVELOPMENT PLAN. In this regard, AGENT shall submit to PRINCIPAL said plan for its approval at least 30 days prior to any construction thereof. PRINCIPAL shall then have 30 days to approve same or to submit to AGENT recommended changes. In the event PRINCIPAL fails to do so within the time specified, then, said DEVELOPMENT PLAN shall for all purposes be deemed approved as submitted.

6. Authority of AGENT. PRINCIPAL herein and hereby delegates and grants to AGENT full right and authority to put into effect said DEVELOPMENT PLAN, to supervise the construction thereof, to manage said building improvements upon completion thereof, and to conduct therein said Bingo and Food Concession Operation. Further, and in the performance thereof to make all decisions and to perform all acts and deeds necessary to manage same as a business, all for and on behalf of PRINCIPAL.

7. Compensation to AGENT. In consideration of its services, AGENT shall receive as compensation sixty-five percent (65%) of Gross Profit from Game Sales and eighty-five percent (85%) of Gross Profit from Food Concession Sales.

8. Operating Expenses. AGENT shall be responsible for the payment of all operating expenses incurred with the construction and management of said Bingo and Food Concession Operation, as well as the cost to maintain said building improvements and the contents therein contained, except as to the payment of taxes as hereinabove defined.

9. Land Description. The Tribal Land upon which said building improvements are to be constructed and upon which said Bingo and Food Concession Operation is to be conducted, herein referred to as "Premises", is described as follows:

> A tract of land in Section 31, Township 10 N, Range 4 E, more particularly described as beginning at the NW corner of Lot 1, NW ¼ of NW ¼ thence East for 660 feet, thence South for 660 feet, thence West 660 feet, thence North 660 feet to the point of beginning.

Subject to Survey: The cost of said survey is to be borne solely by AGENT. Further said survey is not to be performed until such time as the Lease Agreement attached hereto (Exhibit "A") has been approved by the Secretary. Further, PRINCIPAL represents and warrants that said Tribal Land is free and clear of all liens and encumbrances of whatsoever nature and kind, except as to boundary road and utility easements of record.

10. Construction Completion Date. Completion of the aforesaid DEVELOPMENT PLAN shall occur not later than 120 days from and after the date of approval of the Land Lease Agreement, attached hereto as Exhibit "A" and made a part hereof, by the Secretary of the United States Department of the Interior or his authorized representative, delegate or successor; Except, AGENT shall be granted additional time which is equal to the time caused by inclement weather conditions, material shortages or labor strikes.

11. Profit to PRINCIPAL. PRINCIPAL shall be entitled to thirty-five percent (35%) of Gross Profits from Game Sales and fifteen percent (15%) of Gross Profits from Food Concession Sales.

12. Guarantee to PRINCIPAL. In consideration of such appointment, AGENT guarantees to PRINCIPAL $120,000.00 per annum for the first year of operation which sum is to be paid in advance in monthly installments of $10,000.00 each on or before the first day of each month as an accumulative credit against PRINCIPAL'S Gross Profit from Game Sales, whereby in those months that said AGENT'S guarantee exceeds PRINCIPAL'S Gross Profit from Game Sales, such excess will be credited on behalf of AGENT against those months when said PRINCIPAL'S Gross Profit from Game Sales exceeds said AGENT'S monthly guarantee. Said adjustment, if any, shall be accomplished at the end of the first year, and shall not exceed $10,000.00. Further and in the event PRINCIPAL'S monthly Gross Profit from Game Sales for any given month exceeds said AGENT'S guarantee, then, AGENT shall disburse to PRINCIPAL such excess on or before the 15th day of the following month. During the second year and thereafter, said guarantee shall be $10,000.00 per month, payable in advance on the first day of the month, or PRINCIPAL'S Gross Profit participation, as set forth in paragraph 11 hereof, whichever is greater. Further, should PRINCIPAL'S Gross Profit participation be greater, then such excess above the monthly guarantee shall be disbursed to PRINCIPAL on or before the 15th day of the following month. In addition, said AGENTS first monthly guaranteed payment shall be paid on or before the Commencement Date. In the event said Commencement Date

occurs on a date other than the first day of the month, then such payment shall be prorated on the basis of a thirty (30) day month for the days remaining in the month said Bingo and Food Concession Sales Operation is commenced.

13. Guarantee to AGENT. PRINCIPAL and AGENT herein agree that at the end of the term of this appointment that the hereinabove proposed building improvements, as well as all equipment, fixtures and furnishings used in connection therewith shall become the sole property of PRINCIPAL. PRINCIPAL and AGENT further agree that, in the event that the proposed Bingo Operation and Food Concession Operation becomes unlawful due to acts or ~~status~~ statutes of the Congress of the United States or any other governmental body which now has or subsequently establishes jurisdiction over the above described Premises upon which said Operation is to be conducted, then, AGENT shall sell to PRINCIPAL and PRINCIPAL shall purchase from AGENT said building and its contents for the sum of :

A. One Hundred Percent (100%) of appraised value during the first year of operation,

B. Seventy-Five Percent (75%) of appraised value during the second year of operation,

C. Fifty Percent (50%) of appraised value during the third year of operation, and

D. Twenty-five Percent (25%) of appraised value during the fourth year of operation.

Further, said appraised value shall be determined by the appointment of an appraiser by PRINCIPAL, an appointment of an appraiser by AGENT, and the appointment of a third appraiser by both PRINCIPAL'S and AGENT'S appointed appraisers. In addition, AGENT agrees to finance the total purchase price of said building and its contents for a term of two years, payable in equal monthly installments, with interest thereon at Liberty's Prime Rate at the time said purchase and sale occurs.

14. Legal Fees. AGENT agrees to pay any and all legal fees which may be incurred as the result of any attempt by any governmental agency to halt, impede, arrest or otherwise constitute a threat to the continuation of said Bingo and Food Concession Operation proposed herein; provided however, that AGENT shall not be required to pay more than $10,000.00 in legal fees per incident. Further, PRINCIPAL warrants and represents that it will not pass any ordinance or regulation which prohibits or will act to impede said Bingo and Food Concession Operation.

15. Exclusive Area of Operation. PRINCIPAL covenants that it will not enter into any agreement with, nor license any other entity, whether it be a person, corporation, partnership, trust or other, for a Bingo and Food Concession Operation, nor any other similar operation. AGENT covenants that it will not engage in any Bingo and Food Concession Operation, nor any other similar operation within a forty (40) mile radius of the above described Premises.

16. Term of Agreement. The term of this Agreement shall be for a period of twenty (20) years, unless the parties hereto agree to extend same in writing. Further, and at the end of said 20 year term, should PRINCIPAL desire to continue said Bingo and Food Concession Operation, AGENT shall have the first right of refusal to match or equal the best offer, if any, made to PRINCIPAL by any other party or parties. In this regard, PRINCIPAL shall give AGENT written notice of any such offer or offers and shall provide AGENT with a photo copy of same. AGENT shall then have 30 days to either match or reject such offer.

17. Prior Lease. It is hereby acknowledged by the parties hereto that the above described Premises consists of a tract of land owned by PRINCIPAL and heretofore leased by PRINCIPAL to AGENT, a photo copy of which lease is attached hereto as Exhibit "A" and made a part hereof. Further, and in consideration of this appointment, the parties hereto agree that the rental payment due under said prior lease shall apply toward AGENT'S guarantee, as set forth in paragraph 12 hereof.

18. License Fee. In addition other sums due hereunder, AGENT shall purchase from PRINCIPAL an Annual License, at a cost not to exceed $100.00, which permits AGENT to conduct said Bingo and Food Concession Operation, according to the proposed Regulations of PRINCIPAL.

19. Counting of Gross Receipts. Counting of Gross Receipts resulting from said Bingo and Food Concession Operation shall be jointly done on a daily basis at the close of business by representatives of both PRINCIPAL and AGENT. Said counting agents of both PRINCIPAL and AGENT shall agree, in writing, prior to their employment, to submit to a polygraph test as required by PRINCIPAL AND AGENT, the cost of which shall be shared by the parties hereto on an equal basis.

20. Accounting Records. AGENT shall maintain accounting records of said Bingo and Food Concession Operation in accordance with accepted accounting methods. Said accounting records shall be kept at AGENT'S principal office, and PRINCIPAL shall have, upon five (5) days advance written notice, the right to inspect and examine said accounting records during normal business hours. Such right may be exercised through an agent, employee or independent certified public accountant designated by PRINCIPAL, all at PRINCIPAL'S sole cost.

21. Monthly Gross Profit Report. AGENT shall furnish to PRINCIPAL on or before the 15th day of each month for the previous month's operation a statement which shows thereon the manner in which PRINCIPAL'S participation in Gross Profits from Game and Food Concession Sales was calculated.

22. Copies of Agreement. This Agreement is executed in six (6) counterparts, each of which is deemed an original for all purposes.

23. Assignment. This Agreement may not be assigned by either party hereto without the consent of the other, but in the event of such consent and assignment, the assigning party shall not be relieved from the obligation, liability and responsibility of performance hereunder.

24. Changes or Modification. This Agreement may not be changed or modified, either in whole or in part, except by initialing and dating a change or changes hereon, or by an amendment in writing to be attached hereto, dated and signed by the parties hereto.

25. Verbal Representations. This is the entire Agreement between the parties hereto and neither party shall rely or be bound by any verbal representations altering the terms and conditions contained herein.

26. Invalid or Unenforceable Provision. If any part or parts of this agreement shall be determined to be invalid or unenforceable for any reason by final judgment of a court of competent jurisdiction, this agreement shall not fail in its entirety but shall be deemed amended, altered and modified to the extent necessary to accommodate said final judgment.

27. Binding Effect. This Agreement shall extend to, and be binding upon, the parties hereto and their respective heirs, executors, assigns, successors and administrators.

28. Notice. Notice, as required hereunder, shall be given by depositing same in the United States Certified Mail in an envelope addressed to the party hereto recipient to whom notice is given. Any such notice so given and mailed shall for all purposes be conclusively deemed to have been given to and received on the date the same was postmarked. For purposes of notice, the address of each of the parties hereto is as hereinabove set forth.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date first above written.

Bill Burch
BILL BURCH, Tribal Chairman

Jim Tacker
JIM TACKER

Mary Lynn
MARY LYNN BILLIGMEYER

Grace L. Burns
GRACE L. BURNS

Robert Arthur Lewis
ROBERT ARTHUR LEWIS

ENTERPRISE MANAGEMENT CONSULTANTS, INC.

By John Clark Caldwell, III
President

Attest

John Clark Caldwell, III
2512 Walnut Road
Norman, Oklahoma 73069
405/321-1214   405/329-8950

January 25, 1982

Mr. John Schoemann, Tribal Administrator
Citizens Band Potawatomi Tribe
Shawnee, Oklahoma

Dear Mr. Schoemann:

Based on a seating capacity of 1,500 and assuming an afternoon and evening session of bingo six days and a single session on Sunday, I project the following revenue and expenses for the first year of operation:

Bingo Revenue	20,000	weekly	1,040,000	per year
Pull-tab Revenue	7,000	Weekly	364,000	per year
Snack bar Revenue	2,800	Weekly	145,600	per year
	29,800		1,549,600	

The above figures represent what remains after the prize money and the cost of the paper product is paid, in the case of bingo and pull-tabs, and after the raw cost of the food or beverage product is paid. Sales of cigarettes or alcohol are not projected.

Expenses

Utilities	3,500	monthly	42,000	per year
Insurance	500	monthly	6,000	per year
Manager	3,000	monthly	36,000	per year
Janitorial	2,000	monthly	24,000	per year
Advertising	4,000	monthly	48,000	per year
Bussing	4,000	monthly	48,000	per year
Labor	6,000	monthly	72,000	per year
Reserve	500	monthly	6,000	per year
	23,500		282,000	

Based on the figures above, the profit before debt service on the building is projected at $1,267,000 for the first year. I would expect that figure to rise each year thereafter as a somewhat direct function of inflation, and I would anticipate a stronger cash flow for a number of years inasmuch as mature bingo halls are more profitable than new ones.

Sincerely yours,

John C. Caldwell

John Caldwell

Appendix B

PAPAGO TRIBE

12,000 Square Foot Building
900 Seat Bingo Hall

COST PROJECTION

Preliminary Site Preparation	$ 25,000.00
Parking Area	65,000.00
Building Cost ($30.00 per sq. ft.)	360,000.00
Furnishing (including Bingo equipment)	73,000.00
Architectural and Engineering	25,000.00
Construction Loan Cost, etc.	30,000.00
TOTAL ESTIMATED COST OF THE BUILDING	$ 578,000.00

PROFORMA

Estimate Income

Income	70% 900 Capacity = 630 players average per night @ $12.50 per person	(7,875.00)
	Propose 6 (six) night operation per week	47,250.00
Estimate One Year Gross Income		2,268,000.00
	Estimate Miscellaneous Sales-One night	(1,500.00)
(Food and Drinks concession, extra cards (bingo) sold and cigarets 1 year)		432,000.00
		$2,700,000.00

OPERATING COST AND PRIZE

Prize (45% of Estimated Gross Income)	$1,020,600.00
Operating Cost	581,400.00
	$1,602,000.00

ESTIMATED YEARLY BASIS

Admission - 1 year net profit	$1,247,400.00
Miscellaneous - 1 year gross	432,000.00
	$1,679,400.00
Operating Cost	581,400.00
TOTAL NET PROFIT	$1,098,000.00
55% Tribe (after debt is paid)	603,900.00
45% Contractors (after debt is paid)	494,100.00

PAPAGO TRIBE

OPERATING EXPENSES

	MONTHLY	YEARLY
Salaries	$ 20,500.00	$ 246,000.00
Executive Salaries	5,000.00	60,000.00
Bookkeeping	600.00	7,200.00
Payroll Taxes	1,500.00	18,000.00
Administrative Cost (guarantee till debt is paid)	3,000.00	36,000.00
Utilities	1,800.00	21,600.00
Telephone	350.00	4,200.00
Insurance (building)	600.00	7,200.00
Insurance (liability & contents)	600.00	7,200.00
Rubbish Pick-up	150.00	1,800.00
Cleaning & Maintenance Supplies	350.00	4,200.00
Office Supplies	100.00	1,200.00
Accounting Fees	600.00	7,200.00
Repairs (bingo equipment)	100.00	1,200.00
Repairs (building)	200.00	2,400.00
Air Conditioning Contract	200.00	2,400.00
Janitorial Service	1,000.00	12,000.00
Legal Fees	1,000.00	12,000.00
Advertising and P.R.	600.00	7,200.00
Printing (bingo programs)	1,000.00	12,000.00
Office Equipment Lease	150.00	1,800.00
Ground Maintenance	350.00	4,200.00
Security Guard	4,200.00	50,400.00
Miscellaneous	500.00	6,000.00
Traveling Expenses	4,000.00	48,000.00
TOTAL EXPENSES	$ 48,450.00	$ 581,400.00

Appendix C

SAMPLE BINGO
MANAGEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _______, 1984, by and between the ______________________ Tribe (herein after referred to as the "Tribe") and Indian Country U.S.A., Inc., a business corporation incorporated under the laws of the State of South Dakota (herein after referred to as the "Manager").

1. DEFINITIONS

A. "Bingo Operations" - as used herein, means a bingo game and all incidental, ancillary or subsidiary businesses operated or instituted pursuant to this agreement.

B. "Facility" - as used herein, means the building to be erected for bingo games and all other necessary and appropriate improvements. The term does not include the land upon which the construction is to take place.

C. "Gross Income" - as used herein, means the total receipts from the operation of bingo games, including but not limited to, admission fees, proceeds from the sale or rental of bingo cards, sale of food and drink and similar items.

"Net Profits" - as used herein, means the amount by which all sales, receipts and revenues exceed operating expenses which expenses shall include, but not be limited to, comercially reasonable wages and compensation paid to employees and independent contractors, cost of goods sold, utilities, taxes, insurance and bonds, a reasonable reserve for operations, advertising, repairs, maintenance supplies, equipment, security, trash removal, travel and transportation, and other routine expenses. Subject to the preceeding sentence, net operating profits shall be computed in conformance with generally accepted accounting principles.

2. TERM OF AGREEMENT

A. Engagement of Manager

The Tribe hereby retains and engages the Manager for the term of fifteen years commencing upon the execution of this Agreement, to manage, administer and operate the tribal bingo enterprise and other such revenue producing activities as may be related to the operation of said bingo enterprise.

B. Extensions

Manager may at its option, extend the term of this Agreement by an additional five years, by giving the tribe written notice to this effect at least six months prior to the expiration of the initial fifteen year term, and, in such case, all terms and conditions of this Agreement will remain in full force and effect.

3. JURISTICTION

If a court action is brought by either party to obtain a declaration of rights or duties under this Agreement, it is agreed that such action shall be brought in the Court of Indian Offenses. The parties agree that in any action or arbitration proceeding to declare the rights or duties of the parties, the rules of decision shall be derived from Tribal Law and Federal Law and in the absence of Tribal and Federal Law from the laws of the State of ____________________.

4. ARBITRATION

Tribe and Manager agree that all questions as to the rights and obligations arising under the terms of this agreement are subject to arbitration. Such arbitration shall be governed by the Rules of the American Arbitration Association.

5. SOVEREIGN IMMUNITY

Tribe agrees to be subject to suit by the Manager to declare rights and duties under this Agreement.

6. EXCLUSIVE OPERATION

The Tribe shall not authorize, permit, license or otherwise sanction the operation of any other bingo operation within the exterior boundaries of the Tribal Reservation.

7. START-UP EXPENSES

A. Manager agrees to supply the necessary capital to cover all start-up expenses for the bingo operation.

B. Manager agrees to be responsible for the following start-up activities, including, but not limited to, site improvement, parking, facility construction, bingo supplies and equipment, advertising and promotion and insurance.

C. All business affairs in connection with the operation, management and maintenance of the tribal bingo enterprise shall be the responsibility of the Manager, who is hereby granted the necessary power and authority to act in order to fulfill its responsibilities pursuant to this Agreement, as limited by the terms of this Agreement.

8. BUSINESS AFFAIRS OF THE TRIBAL BINGO ENTERPRISE

A. Manager shall collect, receive and receipt all the gross sales and revenues that become due and payable and collected in connection with the operation and management of the tribal bingo enterprise, and shall dispurse from such gross amounts all reasonable business expenses necessary and proper for the maintenance and operation of the tribal bingo enterprise and the building and property on which it is located, but not limited to water, heat, light, electricity, insurance, payroll, repairs and ordinary maintenance, and such other routine business expenses as may be reasonably incurred in the operation of the tribal bingo enterprise.

B. ACCOUNTING

Manager shall furnish the Tribe with annual statements prepared by the national accounting firm of _____________. Manager shall maintain full and accurate books of account at its local office, and the Tribe shall have the right to inspect and examine such books at its own expense upon reasonable notice during normal business hours. Such right may be exercised by an agent of the Tribe or an independent certified public accountant employed by the Tribe. The books shall be kept on a cash basis, and the records shall be maintained by using generally accepted accounting principles.

9. PROFIT DISTRIBUTION

A. Manager shall be reimbursed for all capital advanced in accordance with paragraph 7 for start-up activities. Manager shall recover such start-up expenses on a monthly basis in the amount of seventy five percent of the net profits or one hundred fifty thousand dollars whichever is the lesser amount, provided that, monthly operating costs are fully accrued and income is allocated for such expenses. Such expenses shall be deducted from the gross profits in determining net profits in accordance with paragraph 1D.

B. Following full recovery of start-up expenses, Tribe shall receive fifty-one percent (51%) of the net profits and, in consideration of its services, Manager shall receive forty-nine percent (49%) of net profits.

C. Tribe shall receive one hundred thousand dollars from the Manager 30 days after the opening of the bingo enterprise. This sum shall be considered a payment against future profits of Tribe.

10. FACILITY CONSTRUCTION

It shall be the responsibility of the Manager to construct, equip and furnish the facility and site in accordance with construction plans provided by the Manager.

Tribe shall become sole owner of this facility following the expiration of this agreement.

11. MAINTENENCE and REPAIR

Manager agrees to maintain the facility in a condition of good repair and said premises shall be maintained in a clean and attractive condition.

12. BONDING

Prior to the construction of the building and improvements, Manager shall ensure that the contractor or sub-contractor posts a performance bond in an amount equal to the costs of construction.

13. MECHANIC'S LIENS

Manager agrees to hold Tribe harmless for any liability which may be incurred as a result of a mechanic's lien.

14. IDEMNIFICATION

Manager agrees to indemnifty Tribe against all liabilities in connection with the construction of the facility or with the operation of the bingo enterprise, and all liabilities of injury or death suffered by an employee or other person resulting from the bingo management or operation, provided that, this section shall not impose any obligation upon the Manager to indemnify Tribe against willful misconduct or grossly negligent acts or omissions of Tribe, its agents or employees.

15. EMPLOYMENT & TRAINING

A. Manager shall have sole responsibility to and shall employ, direct, control and discharge all personnel performing regular services in connection with the operation, management and maintenence of the tribal bingo enterprise. All persons hired for employment shall be employees of the Manager, and the Tribe shall have no liability to, or for, any such employees. Compensation for the services of all such employees shall be considered an operating expense of the bingo operation.

B. Tribal members shall be given first preference in hiring of employees.

C. Manager will provide a General Manager and provide individuals to carry out a program of instruction for job applicants who are accepted for employment.

16. CHECKING ACCOUNT

The gross receipts of the bingo enterprise shall be deposited in a commercial bank and shall remain there until dispursed by the Manager under the terms of this agreement.

17. INSURANCE

The Manager shall maintain public liability insurance in the amount of at least $1,000,000 per person and $3,000,000 per occurence. Manager shall also keep the building and its contents insured for full replacement value. This expense shall be deemed an operating expense.

18. TAXATION

The Tribe agrees not to levy or collect any form of taxation for the privilage of engaging in business within the exterior boundries of the reservation.

19. ATTORNEY FEES

If an action is brought by either party under the terms of this Agreement, the losing party shall pay all resonable attorney fees of the prevailing party in addition to any other costs or relief awarded by the courts.

20. AUTHORUITY TO EXECUTE

Each party warrants to the other that it has full authority to execute this Agreement and will, upon witten request by the other party, provide satisfactory written evidence of such authority to the extent that either represents or acts for interests other than its own.

21. EXECUTION IN DUPLICATE

This Agreement is being executed in duplicate originals, one copy to be retained by each party. Either is equally valid.

Executed this _______ day of _________ 1984.

_________________________Tribe

_________________________Council Chairman

SUBSCRIBED AND SWORN TO before me this ________ day of _________ 1984.

NOTARY PUBLIC SEAL:

INDIAN COUNTRY U.S.A.

____
John H. Artichoker Jr.

____
Robert T. Leisen

SUBSCRIBED AND SWORN TO before me this _____ day of __________ 1984.

NOTARY PUBLIC SEAL:

Appendix D

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                         BINGO PROFIT FORECAST
                       BY KICKINGBIRD ASSOCIATES

          DAYS PER WEEK    5            FIXED EXPENSES $10000
          AVG SPND BINGO $33            DAILY EXPENSES $   550
          AVG SPND B/O   $12            DAILY PAYOUTS  $ 6800


NO. OF PLAYERS       200                   221                    240

$/DAY          $   -617 (   3000)    $    139 (   9945)    $    822 (  10800)
$/MONTH        $ -13197 ( 192600)    $   2962 ( 212823)    $  17618 ( 231120)
$/YEAR         $-158360 (2311200)    $  35781 (2553880)    $ 211422 (2773440)



NO. OF PLAYERS       250                   260                    270

$/DAY          $   1192 (  11250)    $   1540 (  11700)    $   1902 (  12150)
$/MONTH        $  25323 ( 240750)    $  33027 ( 250380)    $  40731 ( 260010)
$/YEAR         $ 303880 (2889000)    $ 396328 (3004560)    $ 488778 (3120120)



NO. OF PLAYERS       280                   290                    300

$/DAY          $   2263 (  12600)    $   2623 (  13050)    $   2983 (  13500)
$/MONTH        $  48435 ( 263640)    $  56139 ( 279270)    $  63843 ( 288900)
$/YEAR         $ 581224 (3235680)    $ 673672 (3351240)    $ 766120 (3466800)


NO. OF PLAYERS       310                   320                    330

$/DAY          $   3343 (  13950)    $   3703 (  14400)    $   4063 (  14850)
$/MONTH        $  71547 ( 298530)    $  79251 ( 308160)    $  86955 ( 317790)
$/YEAR         $ 858568 (3582360)    $ 951016 (3697920)    $1043460 (3813480)

NO. OF PLAYERS       360                   375                    400

$/DAY          $   5143 (  16200)    $   5683 (  16875)    $   6583 (  18000)
$/MONTH        $ 110067 ( 346680)    $ 121623 ( 361125)    $ 140883 ( 385200)
$/YEAR         $1320810 (4160160)    $1459480 (4333500)    $1690600 (4622400)
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Mr. Taylor. Governor, please proceed with the Acoma testimony.

STATEMENT OF MERLE GARCIA, GOVERNOR, ACOMA PUEBLO, ACCOMPANIED BY PETER MacDONALD, ECONOMIC CONSULTANT

Mr. Garcia. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I will briefly make a statement on our position as far as the Indian gaming goes. Our prepared statement is in your hands and I request that it be included in the final report.

Mr. Taylor. It will be made a part of the record.

Mr. Garcia. Thank you, sir.

My name is Merle Garcia. I am the Governor of Acoma Pueblo, which is located within the State of New Mexico. With me today is Peter MacDonald, an economic consultant and former chairman of the Navajo Tribal Council.

I would like to express my sincere appreciation for the opportunity to present our view to this committee on the subject of Indian gaming. Today and in the next few months you will be considering whether to pass a new law establishing Federal supervision over Indian gaming. I would like first to tell you how important Indian gaming has been to the Pueblo of Acoma, and then I will ask Mr. MacDonald to comment for us on the economic effects of the proposed legislation on the future of my people.

There are about 3,800 members of the Pueblo of Acoma, most of whom live on our 245,000-acre reservation located in New Mexico, 60 miles west of Albuquerque.

Economic development has not been easy for us. Until recently, most of our tribal income has come from the tourist trade or from interest accrued on our general funds and from a small cattle operation. We have depended heavily on Federal funds to support even the most basic government services.

Nearly 2 years ago the tribal council voted to establish a tribal bingo game where Mr. Kickingbird and Mr. Gary Cooper were involved. That vote changed our lives.

Last year, financed in part with bingo proceeds, we built the first gas station, the first restaurant, and the first laundromat on tribal lands. We have used bingo proceeds to pay the expenses of our police, to set up a Tribal Day Care Program for our young children, and to fund college and trade school scholarships. We have donated moneys from our bingo proceeds to help the elderly, to help the handicapped children, and have given to a charitable organization in the community.

Mr. Chairman, at this point I would like to make certain statements that are not in my prepared speech.

Bingo operations on Indian reservations are faced with certain laws that are going to be instituted either by Congress or the States. My preference would be that I think regulations pertaining to Indian gaming should be instituted by the tribes that are in the gaming business, because we are looking at two different aspects of gaming, outside managment and 100 percent owned and operated Indian bingo games.

I am merely concerned because I have been very, very lucky that my gaming is 100 percent owned and 100 percent operated by the tribe. When we first started talking about Indian bingo, the tribal council put together regulations in reference to gaming. These were presented to the State government, the U.S. attorney, the FBI, and with their clean bill of health for Acoma bingo, we proceeeded to put the games together.

In fact, halfway through the operation of the first year I met with the FBI Director in Albuquerque and the U.S. attorney, Mr. William Lutz. I had them out to the Pueblo of Acoma. I indicated to them, gentlemen, my doors are open to you and my accounting books are made available to you any time you feel that there might be something going on.

We have basically coordinated our working relationship with the law enforcement agencies in that particular area. We have not had any problems with our gaming.

I feel that in all the past years Congress has dictated to us they would like to see Indian tribes sustain for themselves in the future. We have moved in that direction, and once we have moved in that direction, everybody is screaming, "There are certain laws so you can't do that."

If the city of Albuquerque can have bingo games—they were in operation long before the Indian games came about. Nobody screamed it was unlawful, but the tribes went in that direction and started developing gaming within their reservation, everybody started to feel real concerned.

By the same token, I can see some of the problems that might occur, but I think we have development (ACOMA) gaming ordinances that are a lot stricter than the State's, at least that was the indication from the Governor of the State of New Mexico.

I really believe that tribes are capable to run their games. I also really believe tribes that have gaming within the reservation are capable enough to put together a gaming ordinance that would control games within Indian reservations rather than somebody else from the outside putting laws together for us.

To continue, I guess next year bingo proceeds will help us to build our first motel, our first truckstop, and a new tourist center. A solar hotwater tank manufacturing plant is on the drawing board for 1988. A tribal construction company will receive funding from bingo proceeds to help with future road construction.

The Acoma bingo has directly put to work 30 tribal members and indirectly, with our new Economic Development Program, many, many more will be hired. These may seem small steps to you, but for the people of the Pueblo of Acoma the change has been dramatic.

For the first time in many years, we have a reliable source of income and, most important of all, a source of income under our own control.

We, the tribal leaders, feel a deep responsibility to use these sources of income to take our people out of poverty, to provide jobs and training, and to use the proceeds to better our community, so that the lives of our children and their children will be enriched.

One final statement, Mr. Chairman: I have heard a lot of bad publicity which suggests Indian bingo attracts criminals like a magnet. Perhaps in isolated cases this has been so, but it is not true for the Pueblo of Acoma. We have run our game for almost 2 years with no problem of that sort. In fact, we asked the accounting firm of Arthur Andersen to do an audit of our game, and Arthur Andersen gave it a clean bill of health.

The Acoma bingo game is well managed and the money goes where it is supposed to go. Every penny is accounted for.

At this time, Mr. Chairman, I would like to yield my remaining time to Mr. Peter MacDonald to speak on behalf of the Pueblo of Acoma and the economic impacts of the proposed legislation.

Thank you, Mr. Chairman.

Mr. TAYLOR. Thank you, Governor.

Mr. MacDonald, before we start, I don't have any further questions for Kirke or Gary and I know they have a 2 o'clock plane to catch. You may leave when you wish.

Governor Ramirez from Pascua Yaqui has a 3 o'clock plane. Governor Ramirez, if you want to occupy that empty seat, we will proceed with Mr. MacDonald.

Mr. KICKINGBIRD. Thank you.

Mr. TAYLOR. Thank you.

STATEMENT OF PETER MacDONALD, ECONOMIC CONSULTANT, PUEBLO OF ACOMA

Mr. MACDONALD. Thank you very much, Mr. Taylor.

As a friendly advocate of the Pueblo of Acoma, Mr. Chairman and members of the committee, my name is Peter MacDonald and I appear today on behalf of the Pueblo of Acoma.

Governor Garcia, whom I have known for a long time, has asked me to comment on the proposed legislation because I have a very strong background in both tribal government and private industry. In both situations the ability to make decisions free from outside influence or control can be vital to the success of any endeavor.

At the present time Indian tribes, including the Pueblo of Acoma, are largely able to control their gaming operations as they see fit. This legislation, if passed, will change that.

Federal approval will be required for every tribal gaming law and for every management contract. The Bureau of Indian Affairs, to its credit, has resisted previous congressional efforts to require blanket Federal approval of tribal gaming operations or ordinances.

The Federal involvement proposed in the various pending bills to me is a step backward for those tribes such as the Acoma which have the proven ability to structure and implement their gaming ordinances without Federal supervision or oversight of any kind.

It is a step backward in terms of tribal sovereignty which is painful for any tribe seeking to establish self-government. As we all know, for the past 15 years, there has been a great deal of effort on the part of Congress and Indian communities to move forward under the banner of Indian self-determination.

For that reason, I also feel it is a step backward for tribal economic independence. Federal supervision means regulations to be followed and approvals to be secured. In short, Federal supervision means bureaucracy, which means delay and loss of profit.

We are talking about business here, tribal business ventures, not a social or welfare program. The Bureau of Indian Affairs has made itself available to those tribes which request assistance in entering into gaming contracts or in enacting gaming ordinances. It is a far cry from this offer of assistance to legislation mandating Federal interventions such as that before you today.

Three reasons have been generally suggested for requiring the Secretary of the Interior to approve all tribal gaming laws and management contracts.

First, some believe the Secretary must approve tribal gaming ordinances to insure that these ordinances permit only legal gaming operations. This, however, is a question for the courts, not the Secretary. Secretarial approval of bingo and jai alai games has not prevented court challenges. What, then, is the purpose of this approval requirement other than to provide a hoop for tribes to jump through?

Second, some believe the Secretary must approve management contracts to insure that a tribe receives its fair share of the proceeds. The question of what is a fair contract is one for the marketplace, not for the code of Federal regulations.

The BIA has issued guidelines available to any tribe who wishes to take advantage of them, and legislation requiring tribes to seek Federal approval and abide by Federal guidelines is unnecessary. It penalizes those tribes which seek to get off Uncle Sam's lap and stand on their own two feet.

Third, some believe that Secretarial approval of management contracts will reduce the risk of tribal involvement with organized crime. For years organized crime has been the target of the FBI and the Department of Justice, both of which already have jurisdiction on Indian lands. No jurisdictional vacuum exists which would require Federal legislation.

It would seem more staightforward for tribes to send inquiries directly to the FBI and then make their management decisions accordingly. Given access to the background information, tribes are capable of making their own judgments about those they employ. It is a slap in the face of tribal sovereignty when Congress, however well meaning, makes these decisions for us.

Bingo, as a dependable source of tribal revenue, must be run like a business. As with any type of business, there will be those who succeed and those who fail. The Pueblo of Acoma has a game which I consider is a very successful business. They run it; they own it; and they management it.

They have been operating this bingo operation for 2 years now, and I don't see any criminal element on Acoma Reservation, which I have heard by many of those who say Indian bingos attract the hoods, drugs, prostitution, and what have you. If you come to the Acoma Reservation, you don't find criminal element there like that, no massage parlors, or no prostitution. However, if you go over to Albuquerque, NM, or Phoenix, you will see a bunch of massage parlors and prostitution going on. There is something to be said about Indians regulating and policing their reservation free of these kinds of element.

Federal intervention is not needed. It can only serve to hamper the strong economic gains this tribe has made during these last 2 years.

The choices are simple. Indian gaming can be outlawed and the small tribes stripped of their sole significant source of non-Federal moneys or Indian gaming can be confirmed as a reasonable alternative to permanent dependence on the Federal wallet. The choice is yours.

Today the attorneys general paint pictures of hoods with green eyeshades snatching money from the purses of the elderly, cheating the tribes of their fair share of these ill-gotten gains, and running the local church charity games out of business. This is, indeed, a grim picture, but it is not reality.

Bingo is the main source of Indian gaming revenues. The game is considered so harmless a form of gambling that all but a handful of States have legalized it in one form or another. It is viewed as harmless; that is, when churches run the games or veterans or charities of any sort. When Indians enter the picture, however, bingo mysteriously becomes gambling and it is viewed as either a moral outrage shocking to the conscience of the community or as a game so difficult to manage that the noble Red Man cannot help but become the prey of unscrupulous, unsavory, disreputable schemers.

Tribes are new to the bingo business and some have made mistakes, but this is hardly justification for a law which straitjackets tribal economic freedoms and destroys the tribes' ability to enact gaming ordinances and to seek out and contract with management personnel of their own choosing. The suffocating influence of the well-intentioned Federal trustee will only serve to impede tribal economic independence.

Instead, to protect the tribes from the harassment of repetitive, expensive litigation, we urge the Congress to enact legislation which simply confirms to the tribes their right to engage in and control activity on their own lands free from the restrictions of State civil and regulatory laws.

To help you put into perspective the true impact on the Indian economy of gaming activity, I have submitted to you an economic analysis which will provide facts, not fiction, upon which your decision must rest.

I appreciate the opportunity to appear before you today, and I would be pleased to answer any questions you may have.

Mr. TAYLOR. Thank you very much, Mr. MacDonald. The material you submitted will be made part of the record at this point.

[The material follows. Testimony resumes on p. 351.]

ECONOMIC CONDITIONS OF SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

Submitted by Peter MacDonald

on behalf of the Pueblo of Acoma

on

S. 902

before the

Select Committee on Indian Affairs
United States Senate

Study Conclusions

The impact of the tribal bingo/gaming operations in the study sample on the tribal economies varies significantly depending on the degree to which other economic opportunities are available to each tribe. Conversely, the suspension of bingo/gaming operations would affect the economies of the selected tribes differently, also depending on the relative size of their economies and the relative position of the bingo operation in it. It is likely that all tribes would be affected adversely to a significant degree, with some tribes' economies experiencing severe setbacks. The tribes most likely to be severely affected by suspension of bingo operations would be the smaller tribes with limited land bases and/or limited resources for tribal enterprises, and which are located in rural areas which provide limited employment opportunities for tribal members.

These conclusions could be expected to apply to all tribes in the United States which currently operate or plan to operate bingo/gaming operations, as the sample represents a cross-section of tribes with urban and rural locations, large and small land and population bases, and extensive and limited natural resources. The sample also considers the 12 largest bingo operations in terms of gross revenues, as well as 11 lower-volume operations. The potential loss of $100,000 to $1,000,000 per month among the 12 highest gross revenue operations (according to the Indian Finance Digest 1984 article) would be a severe loss to all tribes, regardless of the magnitude of their other revenue sources. The loss of such income, for many of the bingo operating tribes, would result in a degredation of public services which have been enhanced recently through the use of bingo operations revenues. A related impact would be felt on the family income level, caused by a reduction in family income due to elimination of on-reservation jobs. Many of the bingo operations jobs are held by women who ordinarily cannot compete in their regional job market. This is due to the fact that many of the positions available to Indians are unskilled labor jobs which are filled almost exclusively by men.

Study Methodology

This study was conducted to determine potential effects of suspension of tribal bingo/gaming operations on the economics of tribes as a whole, and tribal members as individuals and families. A sample of 23 tribes with bingo operations was chosen, representing approximately one-third of the tribes which currently operate, or are planning to operate bingo enterprises. The sample was chosen to represent a cross-section of the various types of economies encountered by tribes with bingo operations. The sample represents tribes with both urban and rural locations, large and small population and land bases, extensive and limited natural resources and regional economies with a lack of off-reservation employment opportunities and others with limited off-reservation opportunities. The group also represents all regions of the United States. Approximately one-half of the sample size was made up of the tribes with top 12 bingo operations in terms of gross revenue (as identified in the Pilot Edition of Indian Finance Digest, "Gambling in Indian Country: Congress Pays Attention", published in 1984). The remaining 11 tribes added to the sample were chosen because of their relatively smaller operations and/or because of the nature of their economies and the ability of their inclusion in the sample to enhance the diversification of the sample to create a more balanced cross-section of demographic and economic characteristics.

Information on the local and regional economies of the sample tribes was obtained through interviews with state and county officials supplemented by information from Indian Finance Digest and recent newspaper articles. The February, 1985 National Roster of Certified Indian and Alaskan Native Economic Enterprises and 1983 Buyers Guide to Products Manufactured on Indian Reservations published by the U.S. Bureau of Indian Affairs (BIA) provided the required information on tribal enterprises. Tribal employment data were obtained from BIA 1985 population and labor force estimates; while the 1980 U.S. Census provided income data relating per capita income of Indian reservation residents or tribal members to that of the county in which the reservation (or tribe) is located. Assumptions concerning the numbers of tribal members employed by bingo operations were made for both large (75 to 100) and small (25 to 50) operations. These employment estimates were then compared to the 1985 estimated total tribal employment figures for the 23 sample tribes as published by the BIA, to determine the potential impact on tribal employment (and thus, implications for income impacts on individual families).

Potential Impacts on Sample Tribes

The 23 tribes in the study sample would experience a mixed group of impacts of suspension of bingo operations, which would generally fall into three major groups: (Group 1) Severe impacts on both tribal enterprise income and tribal employment and individual/family income; (Group 2) Severe impacts on either tribal income or employment-related income, with less severe or moderate impacts on the other; and (Group 3) Moderate impacts on both tribal and employment-related income, or moderate impacts on one, and small impacts on the other.

The 23 sample tribes should be placed in Groups 1, 2 and 3, accordingly:

Group 1	Impact on Tribal Enterprise Income	Impact on Employment Related Income
Ponca Tribe	Severe: No other tribal enterprises. Small land base, few natural resources.	Severe: No tribal enterprises to work for, reduction of 8 to 11% of employed.
Otoe-Missouri	Severe: No other tribal enterprises. Small land base, few natural resources.	Severe: No tribal enterprises for, reduction of 5 to 10% of employed.
Ft. McDowell Reservation	Severe: Only a small sand and gravel operation, limited agricultural potential.	Severe: Current 49% unemployment rate. Loss of 27 to 42% of employed.

Pasqua Yaqui	Severe: No other tribal enterprises. Small land base, low tribal income.	Severe: Current 48% unemployment rate. Loss of 16 to 31% of employed. Extremely low incomes.
Muckleshoot Reservation	Severe: No other tribal enterprises. Small land base, Few natural resources. Low tribal income.	Severe: Current 57% unemployment rate. Fishing industry in the area is seasonal. Loss of 7 to 14% of employed. Extremely low incomes.
Morongo Reservation	Severe: Only a small-scale cattle Low tribal income. Few natural resources. Agriculture extremely limited.	Severe: Current 39% unemployment rate. Job opportunities limited. Agriculture extremely limited. Loss of 11 to 21% of employed.
Cabazon) Rincon) Baronza)	Severe: No other tribal enterprises except small-scale skeet shooting at Cabazon. Few natural resources.	Severe: Extremely high unemployment rates, 54 to 65%. Loss of high percentage of employed.
Group 2		
Seneca Tribe	Severe: Only small-scale campground operation. Relatively low tribal income for tribal population and large land base.	Moderate: Current 51% unemployment rate. Loss of 3 to 6% employed. Ironworkers jobs sporadic and temporary.
LacCourte Oreille	Moderate: Several tribal enterprises. Plans for large projects. Bingo operation should form significant portion of tribal income at least until planned projects are completed.	Severe: Current 52% unemployment rate. Loss of 9 to 19% employed.
Prior Lake Sioux Tribe	Moderate: Planned industrial park and motel complex should bring large income. Until they are in full operation, bingo should form significant portion of tribal income.	Severe: Although tribe has a relatively low unemployment rate (15%) a high percentage of those employed would lose their jobs.
Comanche	Moderate: Planned race track should bring significant income. Until completion bingo operations income should be highly signi-	Severe: Current 45% unemployment rate. Loss of 3 to 6% employed.

	ficant.	
Potawatami Reservation	Severe: No other tribal enterprises. Small land base.	Moderate: Relatively low unemployment rate (24%). But loss of 5 to 10% of jobs would be a problem.
Acoma Pueblo	Moderate: Tourist, retail and hospital enterprises provide other income sources. But tourist and retail trade is partly seasonal, and is enhanced by visits from bingo participants.	Severe: Current 63% unemployment rate. Loss of 10 to 20% of employed.
Papago Reservation	Moderate/Severe: Agriculture and small-scale retail now. Free trade industrial zone and shopping center under construction. Until they are fully operational bingo should provide a significant portion of tribal income.	Low: Current 21% unemployment rate. Loss of 1 to 2% of employed.
Tulalip Reservation	Moderate/Severe: Only a fish processing operation. Bingo should provide a significant portion of tribal income.	Severe: Current 39% unemployment rate. Loss of 12 to 33% of employed.
Group 3		
Seminole	Moderate: Tourist trade, retail, nursery, cattle ranching provide income. Bingo should still represent a significant portion of tribal income.	Moderate: Current 19% unemployment rate. Loss of 5 to 11% of employed.
St. Regis Mohawk	Moderate: Tourist trade, shopping center, resort/RV center planned. Until full operation bingo should represent a large portion of tribal income.	Severe: Current 71% unemployment rate. Loss of 6 to 12% of employed.
Cherokee Reservation	Moderate: Tourist industry-seasonal. Logging, printing and other manufacturing operations bring income. But bingo should still represent a significant percent of tribal income, as it is one of top 12 grossing bingo	Moderate: Current 39% unemployment rate. Loss of 7 to 9% of employed.

	operations.	
Oneida Reservation	Moderate: Retail trade, planned hotel complex will bring in income. But bingo will represent significant portion of tribal income until hotel/resort is fully operational.	Moderate: Current 37% unemployment rate. Loss of 7 to 9% of employed.
Ft. Berthold Reservation	Moderate: Hospital, motel/tourist complex bring income. Bingo should still represent a significant portion of tribal income.	Moderate: Current 40% unemployment rate. Loss of 4 to 8% of employed.
Yakima Reservation	Moderate: Industrial park, furniture operation provide income. Some agriculture. Bingo should still represent a significant portion of tribal income.	Moderate: Current 40% unemployment rate. Loss of 2 to 4% of employed.

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Cherokee Reservation, North Carolina (Eastern)			
Tribal Members' Industries Employed In (a):	Tribal government/BIA, White Shield Industries, private plant near reservation (100 employees).			
Tribal Enterprises (b):	Cherokee Boys' Club, 200 employees/ graphic center, manufacturing plant, tourist industry (several stores) in town of Cherokee. Logging operation.			
General Economic Conditions for Tribe and Tribal Members (a):	Some employment on the reservation and off it, is seasonal, not many opportunities other than tribal enterprises.			
1985 BIA Estimated Tribal Unemployment Rate (c):	39%			
County (d):	Cherokee Jackson		Graham Swain	
1980 Census Reservation/ Tribe Per Capita Income (e):	Cherokee Jackson	$3,058 $3,222	Graham Swain	$2,781 $2,966
1980 Census Countywide Per Capita Income (f):	Cherokee Jackson	$4,445 $4,987	Graham Swain	$4,615 $4,123
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	Cherokee Jackson	69% 65%	Graham Swain	60% 72%
Total Tribal Employment (c):	1,085			
Bingo Operation % of Total Tribe Members' Employment (h):	7 to 9%			

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Seminole Tribe, Hollywood, Florida (Eastern)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, shops near the Reservation.
Tribal Enterprises (b):	Large-scale hospital, tourist Indian Village, large-scale cattle ranching, restaurant, small-scale nursery.
General Economic Conditions for Tribe and Tribal Members (a):	Most Seminoles who work, work in tribal government, the tribal enterprises or in nearby private shops. Transportation to get to jobs in nearby cities of Ft. Lauderdale and Hollywood is poor.
1985 BIA Estimated Tribal Unemployment Rate (c):	19%
County (d):	Broward
1980 Census Reservation/ Tribe Per Capita Income (e):	$4,495
1980 Census Countywide Per Capita Income (f):	$8,624
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	52%
Total Tribal Employment (c):	465
Bingo Operation % of Total Tribe Members' Employment (h):	5 to 11%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	St. Regis Mohawk Reservation, New York (Eastern)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, American Mohawk Erectors and Rebar Workers Union, Iron Workers Union.
Tribal Enterprises (b):	Truck stop and restaurant (80 employees), new shopping center, tourist marina, motel/RV centers planned.
General Economic Conditions for Tribe and Tribal Members (a):	Iron workers work on jobs throughout New York State area, few local opportunities near Reservation. Iron worker's projects not completely full-time. High unemployment.
1985 BIA Estimated Tribal Unemployment Rate (c):	71%
County (d):	Franklin
1980 Census Reservation/ Tribe Per Capita Income (e):	$3,931
1980 Census Countywide Per Capita Income (f):	$5,283
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	74%
Total Tribal Employment (c):	426
Bingo Operation % of Total Tribe Members' Employment (h):	6 to 12%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Seneca Tribe New York (Eastern)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, members of iron workers union.
Tribal Enterprises (b):	Campgrounds operation, small-scale.
General Economic Conditions for Tribe and Tribal Members (a):	Little opportunity in neighboring Buffalo area. Some iron workers. No local retail outlets to work in. Few opportunities in farming.
1985 BIA Estimated Tribal Unemployment Rate (c):	51%
County (d):	Genessee
1980 Census Reservation/ Tribe Per Capita Income (e):	$4,340
1980 Census Countywide Per Capita Income (f):	$6,678
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	65%
Total Tribal Employment (c):	810
Bingo Operation % of Total Tribe Members' Employment (h):	3 to 6%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Lac Courte Oreille Reservation, Wisconsin (Minneapolis)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, Tribal Business Corporation, unskilled and semi-skilled jobs in the general area.
Tribal Enterprises (b):	Grocery store/commercial center, lumber operation, printing, tobacco store, gas station/garage complex, commercial center, Cranberry Mart, construction company, $1.3 million payroll - plan $5 million. Hydroelectric dam to sell electricity to Northern States Utility.
General Economic Conditions for Tribe and Tribal Members (a):	Little opportunity in off-reservation communities for tribal members. Tribal enterprises provide relatively large tribal income.
1985 BIA Estimated Tribal Unemployment Rate (c):	52%
County (d):	Sawyer Brown
1980 Census Reservation/ Tribe Per Capita Income (e):	Sawyer: $3,039 Brown: $4,291
1980 Census Countywide Per Capita Income (f):	Sawyer: $5,070 Brown: $7,185
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	Sawyer: 60% Brown: 60%
Total Tribal Employment (c):	265
Bingo Operation % of Total Tribe Members' Employment (h):	9 to 19%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Oneida Reservation, Wisconsin (Minneapolis)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, tribal businesses, skilled, semi-skilled and unskilled jobs in industry and retail in Green Bay and Appleton Bay.
Tribal Enterprises (b):	Commercial complex, grocery, garage, 5 cigarette stores, rest home, planning $9 million hotel complex near Green Bay.
General Economic Conditions for Tribe and Tribal Members (a):	Many tribe members work in Green Bay and Appleton areas. Tribal enterprises small scale until hotel complex is in operation.
1985 BIA Estimated Tribal Unemployment Rate (c):	37%
County (d):	Outagamie
1980 Census Reservation/ Tribe Per Capita Income (e):	$3,794
1980 Census Countywide Per Capita Income (f):	$7,267
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	52%
Total Tribal Employment (c):	1,066
Bingo Operation % of Total Tribe Members' Employment (h):	7 to 9%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Prior Lake Sioux Tribe, Minnesota (Minneapolis)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, retail, skilled, semi-skilled and unskilled jobs in industry in Minneapolis/St. Paul area.
Tribal Enterprises (b):	Liquor and tobacco store, 100 acre industrial park near Minneapolis suburb, currently looking for outside tenants; planning motel complex.
General Economic Conditions for Tribe and Tribal Members (a):	Tribal members employed on and off reservation in Minneapolis/St. Paul area. Many opportunities. Industrial park and motel complex would give tribe high income related to its population size even without bingo operation.
1985 BIA Estimated Tribal Unemployment Rate (c):	15%
County (d):	Scott
1980 Census Reservation/ Tribe Per Capita Income (e):	N/A
1980 Census Countywide Per Capita Income (f):	N/A
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	N/A
Total Tribal Employment (c):	33 (i)
Bingo Operation % of Total Tribe Members' Employment (h):	N/A (High percentage of total employment)

TABLE i

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Ponca Tribe, Oklahoma (Anadarko)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, retail and labor jobs in nearby small towns and Ponca City.
Tribal Enterprises (b):	Bingo is the only sizeable tribal enterprise.
General Economic Conditions for Tribe and Tribal Members (a):	Not many opportunities in agriculture. Most Indians employed in the general area have unskilled and semi-skilled jobs in nearby small towns.
1985 BIA Estimated Tribal Unemployment Rate (c):	23%
County (d):	Kay
1980 Census Reservation/ Tribe Per Capita Income (e):	$4,268 (g)
1980 Census Countywide Per Capita Income (f):	$7,550
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	57%
Total Tribal Employment (c):	930
Bingo Operation % of Total Tribe Members' Employment (h):	8 to 11%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Otoe-Missouri Tribe, Oklahoma (Anadarko)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, semi-skilled and unskilled jobs in nearby small towns.
Tribal Enterprises (b):	Bingo would be the only tribal enterprise. Not mentioned by Brown.
General Economic Conditions for Tribe and Tribal Members (a):	Not many opportunities, little agriculture in the area. Most employment as unskilled laborers and semi-skilled jobs.
1985 BIA Estimated Tribal Unemployment Rate (c):	24%
County (d):	Noble
1980 Census Reservation/ Tribe Per Capita Income (e):	$3,168
1980 Census Countywide Per Capita Income (f):	$6,476
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	49%
Total Tribal Employment (c):	491
Bingo Operation % of Total Tribe Members' Employment (h):	5 to 10%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Comanche Tribe, Oklahoma (Anadarko)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, semi-skilled and unskilled jobs in Lawton.
Tribal Enterprises (b):	Oil and natural gas leases have all been bought up by outside companies. All operations have been shut down. Bingo operation not doing well. Kiowa/Comanche and Apaches Economic Development Committee plans a jointly-owned racetrack near Lawton.
General Economic Conditions for Tribe and Tribal Members (a):	Not many opportunities in small agricultural areas. Most employment as unskilled laborers and semi-skilled jobs in Lawton and other small towns.
1985 BIA Estimated Tribal Unemployment Rate (c):	45%
County (d):	Comanche
1980 Census Reservation/ Tribe Per Capita Income (e):	$3,507
1980 Census Countywide Per Capita Income (f):	$5,665
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	62%
Total Tribal Employment (c):	800
Bingo Operation % of Total Tribe Members' Employment (h):	3 to 6%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area): Potawatomi Reservation, Kansas (Anadarko)

Tribal Members' Industries Employed In (a):	Tribal government, semi-skilled and unskilled labor jobs in Horton and Hiawatha, and on farms in nearby towns.
Tribal Enterprises (b):	Bingo not mentioned by Brown. No other tribal enterprises.
General Economic Conditions for Tribe and Tribal Members (a):	Some agricultural employment, some retail employment in towns. Little additional opportunities.
1985 BIA Estimated Tribal Unemployment Rate (c):	24%
County (d):	Jackson
1980 Census Reservation/ Tribe Per Capita Income (e):	$3,252
1980 Census Countywide Per Capita Income (f):	$6,169
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	53%
Total Tribal Employment (c):	469
Bingo Operation % of Total Tribe Members' Employment (h):	5 to 10%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Fort Berthold Reservation, Three Affiliated Tribes, Mandan, Hidatsa and Arikaka, North Dakota (Aberdeen)	
Tribal Members' Industries Employed In (a):	Tribal government/BIA, Indian Hospital and Health Clinic, retail trade in New Town, farming and cattle ranching.	
Tribal Enterprises (b):	Indian Health Clinic and Hospital, motel/tourist complex (not doing well). Exploratory ventures for coal, oil and natural gas.	
General Economic Conditions for Tribe and Tribal Members (a):	Because motel complex is not doing well, few opportunities outside of tribal government services area and individual farming and ranching.	
1985 BIA Estimated Tribal Unemployment Rate (c):	40%	
County (d):	Dunn	
	McKenzie	
	McLean	
	Mountrail	
1980 Census Reservation/ Tribe Per Capita Income (e):	Dunn	$2,730
	McKenzie	$2,730
	McLean	$2,730
	Mountrail	$2,730
1980 Census Countywide Per Capita Income (f):	Dunn	$5,650
	McKenzie	$6,142
	McLean	$6,068
	Mountrail	$5,476
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	Dunn	48%
	McKenzie	44%
	McLean	45%
	Mountrail	50%
Total Tribal Employment (c):	674	
Bingo Operation % of Total Tribe Members' Employment (h):	4 to 8%	

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Acoma Pueblo, New Mexico (Albuquerque)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, tourist, retail trade, some unskilled and semi-skilled jobs in Albuquerque area.
Tribal Enterprises (b):	Sky City tourist complex, other tourist shops, truck stop on I-40, grocery store, tribal construction company, regional hospital.
General Economic Conditions for Tribe and Tribal Members (a):	High unemployment rate, individuals do not compete successfully for jobs in Albuquerque. Tribal enterprises doing well, but tourist trade is seasonal.
1985 BIA Estimated Tribal Unemployment Rate (c):	63%
County (d):	Valencia
1980 Census Reservation/ Tribe Per Capita Income (e):	$2,885
1980 Census Countywide Per Capita Income (f):	$5,850
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	49%
Total Tribal Employment (c):	250
Bingo Operation % of Total Tribe Members' Employment (h):	10 to 20%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Fort McDowell Reservation, Arizona (Phoenix)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, Salt River Project Water Works, limited grazing.
Tribal Enterprises (b):	Sand and gravel operation (small scale.)
General Economic Conditions for Tribe and Tribal Members (a):	Few opportunities in surrounding area, individuals do not compete successfully for jobs in Phoenix area. High unemployment. Limited potential for agriculture, limited land.
1985 BIA Estimated Tribal Unemployment Rate (c):	49%
County (d):	Maricopa
1980 Census Reservation/ Tribe Per Capita Income (e):	$2,843
1980 Census Countywide Per Capita Income (f):	$7,716
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	37%
Total Tribal Employment (c):	68 (i)
Bingo Operation % of Total Tribe Members' Employment (h):	27 to 42%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Pasqua Yaqui Tribe, Arizona (Phoenix)
Tribal Members' Industries Employed In (a):	Tribal government, no local retail or industrial opportunities.
Tribal Enterprises (b):	Bingo operation closed, currently negotiating to open it again.
General Economic Conditions for Tribe and Tribal Members (a):	Small land base, no tribal enterprise opportunities. Low tribal income, low per capita income. Individuals not able to compete for jobs in the Phoenix area.
1985 BIA Estimated Tribal Unemployment Rate (c):	48%
County (d):	Maricopa
1980 Census Reservation/ Tribe Per Capita Income (e):	$1,374
1980 Census Countywide Per Capita Income (f):	$7,716
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	18%
Total Tribal Employment (c):	159
Bingo Operation % of Total Tribe Members' Employment (h):	16 to 31%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Papago Reservation, Arizona (Phoenix)
Tribal Members' Industries Employed In (a):	Tribal government/BIA, small-scale industrial park, retail, desert cattle ranching, farming.
Tribal Enterprises (b):	Foreign/free trade industrial zone (one building occupied, 80 acre major grocery and 6 store shopping center under construction. Papago Farms, grosses $1 million/yr.
General Economic Conditions for Tribe and Tribal Members (a):	Empire Machinery in free trade zone, few jobs in retail (new shopping center). Copper mines now shut down, jobs in Papago Farms. Cannot compete for jobs in Tucson area.
1985 BIA Estimated Tribal Unemployment Rate (c):	21%
County (d):	Pima
1980 Census Reservation/ Tribe Per Capita Income (e):	$2,224
1980 Census Countywide Per Capita Income (f):	$7,147
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	31%
Total Tribal Employment (c):	4,840
Bingo Operation % of Total Tribe Members' Employment (h):	1 to 2%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Yakima Reservation, Washington (Portland)	
Tribal Members' Industries Employed In (a):	Tribal government/BIA, tribal furniture co., hospital, farming, some semi-skilled and unskilled jobs in Yakima area.	
Tribal Enterprises (b):	Industrial park (5 buildings on it), Boise-Cascade and one furniture manufacturer, tribal furniture co. (Mt. Adams Furniture. No mention of bingo operation.	
General Economic Conditions for Tribe and Tribal Members (a):	High unemployment. Individuals not able to compete successfully for jobs in the Yakima area. Some employment in farming, local hospital, tribal furniture co. and government.	
1985 BIA Estimated Tribal Unemployment Rate (c):	40%	
County (d):	Yakima Klickitat	
1980 Census Reservation/ Tribe Per Capita Income (e):	Yakima Klickitat	$3,796 $3,796
1980 Census Countywide Per Capita Income (f):	Yakima Klickitat	$6,555 $6,766
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	Yakima Klickitat	58% 56%
Total Tribal Employment (c):	1,200	
Bingo Operation % of Total Tribe Members' Employment (h):	2 to 4%	

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area): Muckleshoot Reservation, Washington (Portland)

Tribal Members' Industries Employed In (a):	Tribal government, fishing, retail, semi-skilled and skilled jobs in Aberdeen and Auburn areas.
Tribal Enterprises (b):	Bingo only tribal enterprise.
General Economic Conditions for Tribe and Tribal Members (a):	Fishing operations of individuals (mainly seasonal), individuals cannot compete for good jobs in greater Seattle area. Very low income levels and extremely high unemployment. Tribal income limited.
1985 BIA Estimated Tribal Unemployment Rate (c):	57%
County (d):	King
1980 Census Reservation/ Tribe Per Capita Income (e):	$1,094
1980 Census Countywide Per Capita Income (f):	$9,582
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	11%
Total Tribal Employment (c):	364
Bingo Operation % of Total Tribe Members' Employment (h):	7 to 14%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Tulalip Reservation, Washington (Portland)
Tribal Members' Industries Employed In (a):	Tribal government, fish plant, fishing, semi-skilled and unskilled jobs in retail and industry in Marysville and Everett.
Tribal Enterprises (b):	Fish processing plant.
General Economic Conditions for Tribe and Tribal Members (a):	Hewlett-Packard plant on reservation, fish processing plant, 20-30 independent fishermen, individuals not able to compete for good jobs in cities. Low income levels.
1985 BIA Estimated Tribal Unemployment Rate (c):	39%
County (d):	Snohomish
1980 Census Reservation/ Tribe Per Capita Income (e):	$3,501
1980 Census Countywide Per Capita Income (f):	$8,243
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	42%
Total Tribal Employment (c):	216
Bingo Operation % of Total Tribe Members' Employment (h):	12 to 23%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area):	Morongo Reservation, California (Sacramento)
Tribal Members' Industries Employed In (a):	Tribal government.
Tribal Enterprises (b):	Small-scale cattle operation.
General Economic Conditions for Tribe and Tribal Members (a):	Few opportunities, individuals not able to compete for jobs in Palm Springs, Indio, Beaumont/Banning or Riverside areas. Tribal enterprise opportunities are limited. Low income levels.
1985 BIA Estimated Tribal Unemployment Rate (c):	39%
County (d):	Riverside
1980 Census Reservation/ Tribe Per Capita Income (e):	$2,739
1980 Census Countywide Per Capita Income (f):	$7,476
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	37%
Total Tribal Employment (c):	238
Bingo Operation % of Total Tribe Members' Employment (h):	11 to 21%

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area): Cabazon Reservation, California (Sacramento)

Tribal Members' Industries Employed In (a):	Tribal government, semi-skilled and unskilled jobs in Indio area.
Tribal Enterprises (b):	Skeet-shooting operation (small income source).
General Economic Conditions for Tribe and Tribal Members (a):	Few opportunities, individuals not able to compete for good jobs in Indio/Palm Springs area. Tribal enterprise opportunities are limited.
1985 BIA Estimated Tribal Unemployment Rate (c):	N/A
County (d):	Riverside
1980 Census Reservation/ Tribe Per Capita Income (e):	N/A Assumed similar to rate of Morongo Tribe.
1980 Census Countywide Per Capita Income (f):	$7,476
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	N/A
Total Tribal Employment (c):	16 (i)
Bingo Operation % of Total Tribe Members' Employment (h):	N/A (High % of total employment)

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area): Barona Reservation, California (Sacramento)

Tribal Members' Industries Employed In (a):	Tribal government, semi-skilled and unskilled jobs in North San Diego County area.
Tribal Enterprises (b):	No tribal enterprises other than bingo.
General Economic Conditions for Tribe and Tribal Members (a):	Few opportunities, individuals not able to compete for good jobs in San Diego area. High unemployment. Tribal enterprise opportunities are limited. Low income levels.
1985 BIA Estimated Tribal Unemployment Rate (c):	54%
County (d):	San Diego
1980 Census Reservation/ Tribe Per Capita Income (e):	$3,634
1980 Census Countywide Per Capita Income (f):	$7,960
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	46%
Total Tribal Employment (c):	40 (i)
Bingo Operation % of Total Tribe Members' Employment (h):	N/A (High % of total employment)

TABLE 1

CURRENT GENERAL ECONOMIC CONDITIONS FOR SELECTED TRIBES WITH HIGH-LEVEL BINGO GAMING OPERATIONS

TRIBE (BIA Area): Rincon Reservation, California (Sacramento)

Tribal Members' Industries Employed In (a):	Tribal government, semi-skilled and unskilled jobs in North San Diego County area.
Tribal Enterprises (b):	No tribal enterprises other than bingo.
General Economic Conditions for Tribe and Tribal Members (a):	Few opportunities, individuals not able to compete for good jobs in the North San Diego County area. High unemployment. Tribal enterprise opportunities are limited. Low income levels.
1985 BIA Estimated Tribal Unemployment Rate (c):	65%
County (d):	San Diego
1980 Census Reservation/ Tribe Per Capita Income (e):	$4,687
1980 Census Countywide Per Capita Income (f):	$7,960
1980 Census Reservation/ Tribe Per Capita Income % of Countywide (g):	59%
Total Tribal Employment (c):	71 (i)
Bingo Operation % of Total Tribe Members' Employment (h):	N/A (High % of total employment)

Footnotes and Sources

(a) Discussions with local government officials, supplemented by information from articles in Indian Finance Digest (American Indian National Bank Scholarship Fund, Washington, D.C.).

(b) National Roster of Certified Indian and Alaskan Native Economic Enterprises, U.S. Department of the Interior, Bureau of Indian Affairs, Division of Contracting and Grants Administration, Washington, D.C., February, 1985; 1983 Buyers Guide to Products Manufactured on Indian Reservations, Bureau of Indian Affairs, Washington, D.C.; discussions with county and state officials, Indian Finance Digest.

(c) Local Estimates of Resident Indian Population and Labor Force Status: January, 1985, U.S. Department of the Interior, Bureau of Indian Affairs, Office of Financial Management, Washington, D.C. Percent unemployed, seeking work.

(d) Counties containing more than five percent of total Indian reservation population were included in reservation/tribe per capita income comparisons.

(e) U.S. Census, 1980, Social and Economic Characteristics of the Population, individual state volumes, Table 193 (except for Oklahoma tribes, Table 186). Per capita incomes of the portions of reservation population in each individual county were assumed to have the overall reservation per capita rate, as no data were available for the portions of reservations in each separate county.

(f) U.S. Census 1980, Social and Economic Characteristics of the Population, individual state volumes, Table 180.

(g) Derived by dividing the reservation or tribal per capita income by the overall county per capita rate for each portion of reservations located within different counties.

(h) Estimated based on estimates of bingo operation employment divided by total reservation/tribe employment (as listed in the BIA source document identified in footnote (c). Bingo operations assumed to employ 25 to 50 people for small operations and 75 to 100 for large operations.

(i) Assumed not to include recent bingo operation employment.

(j) Based on total BIA employment plus range of estimated bingo operation employment.

Mr. **Taylor**. Mr. George, do you have any comments?

Mr. **George**. No, not right now. If you have any questions of Mr. MacDonald or Governor Garcia or myself, that will be fine. We will be happy to answer them.

Mr. **Taylor**. I have no questions. I think it was excellent testimony.

We would like to express our appreciation for your coming here today. I hope you can make your airplane. I think Governor Ramirez may be hitting it a little closer.

Speaking of that, we have two other groups that have three o'clock planes. Governor, before you begin, I would like to call up Carol Connor with the Greyhound Association and Mr. Esquipula Chaves of the Sandia Pueblo.

Mr. Valencia, I apologize for misreading the name. If you want to go ahead and proceed, please do.

STATEMENT OF ANSELMO VALENCIA, SPIRITUAL LEADER, PASCUA YAQUI TRIBE, TUCSON, AZ

Mr. **Valencia**. Thank you, Mr. Chairman.

Certainly I appreciate the opportunity to come before the committee. I don't have too many things to say, as we have already submitted a written testimony, but I do want to go back home and tell the people, "Yes, I was heard for a couple of minutes."

I just want it to be known that I am from the State of Arizona. I am Anselmo Valencia, spiritual leader of the Pascua Yaqui Tribe.

In the State of Arizona my tribe was the very first to start in the bingo business. Because my tribe lives in the desert composed of nothing but sand, cactuses, and chaparral, there are no natural resources with which we can become self-sufficient. So we looked for a possibility of other income, and have known about other Indian tribes that were doing it in bingo. So we tried bingo.

We have terminated thus far two bingo interested parties—three investors, the first because they did not do any good for us as far as money goes. They might have skimmed a little and everything, and they wouldn't show us their books, so we invited them to go outside our reservation. The second one also, for the same reasons, we ousted them.

A third one came to us from England. People did not like the English-type bingo, so we ended up running our own bingo for a couple of months. But because we are so broke, we couldn't make a go of it.

I am here because the State of Arizona, as it was very clearly defined by the attorney general, Mr. Corbin, does not have jurisdiction over Indians. Therefore, if any of the legislation gave jurisdiction to a State, it would certainly be a very dangerous move. What would the Indians in Arizona do if Arizona State became responsible for Indians under their jurisdiction?

It would let open also other little things and big things, get into our cultural activities, related activities. Indians are known to have, to some people, wierd activities, wierd ceremonies. Would that become harmful?

We realize that large amounts of money do attract people who want to steal it. That is, I believe, the main reason why more banks are robbed than libraries.

[Laughter.]

I just want to quote a Presidential statement of January 24, 1983. It says a lot but, because of the time element, I am just going to quote this.

It says, "Instead of us encouraging self-government: Federal policies have by and large inhibited political and economic development of the tribes. Excessive regulation is self-perpetrating. Bureaucracy would stifle local decisionmaking were it in control of Indian resources and promoted dependency rather than self-sufficiency." That is very true.

As Mr. Corbin puts it, if Indians should be under his care, he does not have the money that the Federal Government now supports the Yaqui Indians with. If he had the money—and I wish he were here so he could hear me—being a person, of my thinking, he is entirely anti-Indian, we would truly have problems with him.

We are for some kind of legislation if necessary to control Indian bingo. Our books are open to anybody that is concerned with our expenditures anytime.

Last year something went wrong with my tribe and, when we presented our books audited for that year, we were missing 98 cents. Somebody got away with 98 cents—but from $4.5 million.

We have nothing to hide. We really have nothing to hide. We want to continue to seek gaming, bingo and other gaming. I do believe that the Indian should be given the opportunity to show the world that they can be successful in businesses. Already presentations have been made here of other Indian tribes who have been successful. Like somebody else said, some will fail; some will succeed. We are trying.

We have been trying to survive in this world since 1533 when Indians here discovered the white men—because we discovered the white men.

I have nothing more to say, except that I would like to introduce Mr. Steve Whilden, who is our legal attorney in gaming. He may have a couple of words to say.

Thank you very much for the opportunity.

[The prepared statement follows:]

PREPARED STATEMENT OF DAVID G. RAMIREZ, TRIBAL CHAIRMAN AND ANSELMO VALENCIA, COMMUNITY MANAGER, PASCUA YAQUI TRIBE

HONORABLE GENTLEMEN: With all due respect, the Pascua Yaqui Tribe of Tucson, Arizona is grateful to have been given the privilege of submitting testimony regarding the Indian Act S. 902. The Pascua Yaqui Tribe is in full support for the adoption and passage of the bill S. 902 as the P.L. for Indian Country gaming, provided that S. 902 would strike out all reference to the state.

The Pascua Yaqui Tribe feels that the language concerning the state would give the states jurisdiction of Tribal Governments, thereby jeopardizing our Sovereign right to self-government and self-determination. Gaming control, if necessary, at this time should be under the Federal Government, B.I.A., to whom responsibilities to Indians is charged.

It is a known fact that American Indians have for many years been dependent on federal funding for existence. Such funding is creating a heavy burden on the taxpaying population of the American public.

The Indian Gambling Law, when it becomes law, will give the American Indians of this country the privilege of creating their own revenues within Indian Country to help fund various Indian programs and projects now funded by various government agencies. Hopefully, this will put American Indians on the right track—going toward Indian self-determination, government-to-government business relationships, and Indian Sovereignty—which have been the sight of the Federal Government for many years.

Therefore, give the Indian a bill to establish federal standards and regulations for the conduct of all phases of gaming activities on Indian lands, and for other purposes.

The states, within their laws, codes and regulations are not prepared to take over the responsibilities of Indians within their respective states.

The Indian has been indoctrinated into believing that the reservation lands belong to them, that their Tribal Councils are the legislators within their lands.

Give the American Indian an opportunity to prove themselves in the business world. The Indian Nations in this country are no longer comfortable with the feeling of being tied to a retaining wall of dependency.

Thusly, you will have eased the taxpayer's pains of supporting Indians and will have given the Indian citizen back his pride that has been taken away from him through blood and tears.

Thank you, in full support of S. 902.

Mr. TAYLOR. Mr. Whilden?

STATEMENT OF STEVE WHILDEN, COUNSEL, PASCUA YAQUI TRIBE

Mr. WHILDEN. I just have a couple of sentences.

In the last 2 days of hearings I keep hearing this persistent implication from some of the witnesses, some of our non-Indian friends, that somehow Indian tribal governments are inherently not capable of regulating their own affairs. This has been a persistent but subtle implication.

I am sure that most of these governments that are represented here today are as well or better prepared to regulate gaming within their jurisdiction than the State of Nevada was in the 1940's.

Mr. TAYLOR. I think the written testimony of the State of Nevada would so indicate their operations were started by Bugsy Segal. [Laughter.]

Mr. WHILDEN. I think when Bugsy and Mo Bailitz got off the train in the 1940's in a dusty little town called Las Vegas, the State of Nevada was totally unprepared for what was to come, but I think we are all impressed by what the State has put together in the way of a gaming control board. I think these tribal governments here today are far ahead of where Nevada was in the 1940's.

Mr. TAYLOR. It does strike me, however, that there is a problem here. Mr. Valencia has testified about the problem of the tribe having access to the books. Have you had an opportunity to look at that problem and do you concur in what he says?

Mr. WHILDEN. I think that the tribes need some technical assistance and some very strong guidelines vis-a-vis the participation in the profits by outside interests. I think, in deference to some of the tribes here who have no outside interest involved—Mark Powless from Oneida and the Puyallups and the Tulalips, and so forth—I have not seen, and I follow this issue rather closely, I have not seen a single line of bad press from any of those facilities—from Oneida, from any of the facilities——

Mr. TAYLOR. I haven't either. Those are tribally operated——

Mr. WHILDEN. Right.

Mr. **Taylor** [continued]. But I have seen lines of bad press about the problem with Yaqui.

Mr. **Whilden**. That's correct.

Mr. **Taylor**. Pascua Yaqui. The problem centers on the inability to have access to the books. That sounds to me like they need a Federal presence for assistance.

Mr. **Whilden**. I think the problem can be dealt with. This is essentially an infant industry, and we have a few growing pains. These things can be attended to without vitiating or penetrating or weakening in any way Indian sovereignty. I think that the issue to be dealt with is outside of Indian sovereignty and it can be dealt with without penetrating or weakening in any way Indian sovereignty.

Mr. **Taylor**. I appreciate that testimony.

We are going to have to move on so that our next witnesses can also try to make a 3 o'clock plane.

Mr. **Valencia**. Thank you very much.

Mr. **Taylor**. Thank you.

If you want to supplement the record, please feel free to supply additional information.

Mr. **Valencia**. Thank you.

Mr. **Taylor**. If the amount submitted, Steve, is 10 inches thick, we will put two sheets in and retain the rest.

Please go ahead.

STATEMENT OF CAROL A. CONNOR, COUNSEL, CAROL A. CONNOR & ASSOCIATES, REPRESENTING THE NATIONAL GREYHOUND ASSOCIATION, ABILENE, KS, ACCOMPANIED BY GARY GUCCIONE, EXECUTIVE SECRETARY, NATIONAL GREYHOUND ASSOCIATION, AND WAYNE STRONG

Ms. **Connor**. Thank you.

For the record, my name is Carol Connor. I am an attorney. I am from Albuquerque, NM.

I would like to thank you for giving us the opportunity to be here today.

To my right is Mr. Gary Guccione, who is the executive secretary of the National Greyhound Association. Their national headquarters and offices are located in Abilene. To my left is Mr. Wayne Strong, who is not only a member of that association, but he is also the individual who is currently entered into a contract with the Santa Ana Pueblo to assist them in building, constructing, and operating a greyhound race track on the Santa Ana Pueblo in New Mexico.

We did submit some written testimony with some exhibits. I would ask that that be entered into the record with one minor, however very important, change. On page 17, the National Greyhound Association makes the statement that, as pointed out in their report, "State and county regulatory agencies have done an excellent job in regulating their sport. There is no reason whatsoever to believe that a tribal regulatory agency"—and this is where the correction comes in—"would not have the same success." That was omitted, and I would ask that for the record that be noted.

I will try to keep this as brief as possible. However, I think this testimony is very, very important. We have been here for 2 days listening to the testimony of not only the tribes of various gaming activities, but to the attorneys general and private individuals. This is the first group that has come forward and will be presenting testimony that they are willing to assist tribes that are interested in at least the greyhound racing business, to assist them in regulating the animal portion of that racing just as they assist every tribe on this continent.

There are really two aspects to a parimutuel sport. One is placing a parimutuel wager on the outcome of some competition, be it a competition between two human beings or horses or dogs or turtles, whatever. In this case, the NGA has been in existence since 1906 and serves a very important function in registering and regulating the greyhound animal themselves, their breeders, the racing kennels, and so on.

I will defer to Mr. Guccione at this point and ask him to explain the role of the National Greyhound Association.

Mr. TAYLOR. Mr. Guccione?

STATEMENT OF GARY GUCCIONE, EXECUTIVE SECRETARY, NATIONAL GREYHOUND ASSOCIATION

Mr. GUCCIONE. Thank you, Carol.

Again, my name is Gary Guccione. I am the executive secretary of the National Greyhound Association, which headquarters in Abilene, KS. I would also refer you to the written testimony that we have submitted that presents our specifics on our position in this matter.

We, as Carol mentioned, are the regulatory agency in greyhound racing having to do with the registrations of the racing animals. We register all breedings, litters, transfers, leases, and all greyhounds at the 50 current race tracks that are open across the continental North America, three tracks in Mexico and 47 in the United States.

We are recognized as such, as the registry, by the National Association of State Racing Commissioners, the American Greyhound Track Operators Association, all individual race tracks, State jurisdictions, and we are not only the oldest regulatory agency involved in greyhound racing, but the oldest association in the entire sport. We were founded in 1906. Track racing did not originate until 1920–21.

We are comprised of the owners and breeders of the greyhounds that compete at all of these tracks, and so we have a vested interest in seeing that the sport is kept honest and credible. We would say that we are proud of the record of our sport. It is a clean and honest sport. If you check the record, you find relatively few scandals, few incidents of crime, few incidents of infiltration or attempted infiltration by organized crime in this sport as compared to any other organized or other methods of wagering, including the parimutuel wagering industry.

In our report we refer to the comments by Sports Illustrated magazine some years back in saying that greyhound racing is the cleanest of the parimutuel sports and that it is as clean as a hound's tooth. We like to take part of the credit for that, for our effort in that regulation, but we think a lot has to do with the fact that it is a relatively easier sport to regulate because of the greater elimination of the human element in racing.

There are no jockeys. There are no trainers who are making the effort to second-guess as to when their horse is going to really be making that effort to win. There are no casino jackpot setups as was referred to in yesterday's testimonies. No levity intended here, but in 65 years of greyhound racing no greyhound yet has been caught taking a bribe.

The sport has grown from 7 to 14 States in the last 12 years, which I think reflects the confidence in greyhound racing, and no effort in the last 25 years has been made to repeal greyhound racing in any of those States.

As I mentioned, we have lots invested in this sport. We see it as an honest sport, and we want to keep it that way. We have witnessed and been involved in the sports regulation since the inception of the sport, since the beginning, and we are confident, after reviewing the proposal of the Santa Ana Racing Commission, that with assistance from the National Greyhound Association that it can, indeed, police its industry of greyhound racing on its reservation.

We are further confident that Wayne Strong, who is a long-time member of the National Greyhound Association and 25 years in the business as a breeder and owner, can successfully and credibly manage such a race track.

Testimony was made yesterday that the States should oversee this because it would be impossible or very difficult for the Indian tribes to effectively regulate it, because they would be so new to it; they would not have the experience involved. We would point to the incident of Iowa which just legalized horse and greyhound racing a year ago, where a commission was appointed of people totally unfamiliar with greyhound racing; they were neophytes in the industry, and in the course of 1 year learned what needed to be done to properly regulate greyhound racing. On June 1 of this year, Dubuque Greyhound Park opened without incident, and they are operating a credible racing industry now in the State of Iowa.

We are not held in awe by what it takes to regulate greyhound racing, and we believe that the Indian Racing Commission—in this case the Santa Anas—can do the same.

Again, we state that greyhound racing is a very credible and honest sport. It is the sixth largest spectator sport in America, and the NGA offers its services to the Santa Anas in helping to establish the policies needed to offer a form of racing that is with integrity and credible.

If there are any questions, we would be happy to try to answer them.

Thank you.

Mr. TAYLOR. Thank you.

Ms. CONNOR. If I might just say a few more words, in picking up where Gary just left off.

Not only is this industry credible, but it is also very profitable. As the committee will see in the attachments to the testimony presented to you, there are several reports on the attendance and the handle not only for the greyhound race industry, but the thoroughbred race industry as well.

I would like to especially refer you to what is marked exhibit A in our written testimony. It is the National Parimutuel Statistical Report for 1981. That will give you some idea of how profitable this industry is, which is one of the reasons—and only one of the reasons—that the Pueblo of Santa Ana wants to go into this. Obviously, Mr. Strong has his own reasons, one being to make a profit.

The other thing that I would like to point out is the second phase facet of any parimutuel sport is the parimutuel wagering itself on the outcome of that race. There was testimony yesterday by someone representing the race horse industry. I heard the attorney general from the State of Arizona and the State of California testify yesterday and today about how well they have been able to keep organized crime out of their parimutuel sporting activities. One of the reasons is because it is computerized. You have windows there. If a individual receives more than a certain amount of money, by Federal law they have to collect it at a certain window. It is just totally different than casino gambling and, for that matter, even bingo.

I would also refer you to in this report a study that updated a 1976 report that was prepared for the Executive branch and Congress on gambling in the United States. In that report it showed very little incident of evidence of organized crime filtering into parimutuel sports.

This report——

Mr. TAYLOR. Can you tell us what page that reference is you have there?

Ms. CONNOR. This is exhibit H. The other report that I referred to was also referred to by another witness. It is the Commission on the Review of the National Policy Toward Gambling conducted in 1976. It was made available to Congress. It was also made available to the White House.

There is a lot of very good information. It is the only thing that I can see that Congress and the executive branch has every really looked into gambling nationally.

I think that one thing that is important to point out is this: because of the smoke screen of organized crime, in independent studies done with local law enforcement agencies, those agencies that they themselves would be dealing with, there is absolutely no evidence of an increase in incidence of crime that is related to the greyhound racing industry. In fact, they supported it.

So, looking at all sides of this issue—and these aren't statements; this is supported by documents—it seems to me that the real issue here is economics. This track will employ anywhere from 350 to 600 people not only from the Pueblo of Santa Ana and other pueblos, but from the non-Indian towns that are contiguous to the reservation. They are all very excited about it. As a matter of public policy, they are all for it.

We defer to the tribal government in their comments as to this proposed legislation. We agree that we would hope that the definition of what is the controlled activity in the State—in this case parimutuel wagering—would have the amendments as suggested by Gila River, and that is that that is the conduct being regulated by the State; therefore, whatever competition is going on, be it between human beings or animals, is up to the tribe to decide that.

Thank you very much.

[Ms. Connor submitted the following material for inclusion in the record: A letter dated June 19, 1985, and a prepared statement on behalf of the National Greyhound Association, with exhibits A–I. The material follows. Text resumes on p. 561.]

Carol A. Connor & Associates

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June 19, 1985

Senator Dennis DeConcini
Congressman Morris Udall
Congressman Bill Richardson
Congressman Norman Shumway
Capitol Hill
Washington, DC 20240

Re: S. 902, H.R. 1920 and H.R. 2404
Pending Legislation to Establish Federal Standards and Regulation on the Conduct of Gambling Activity on Indian Reservations and for Other Purposes.

Gentlemen:

On behalf of the National Greyhound Association (NGA) and Mr. Wayne Strong I have herewith submitted comments and information on the above referenced legislation that would affect our industry and those who invest in it.

The sport of greyhound racing is one of the fastest growing spectator sports in the country. As evidenced by the written testimony and supporting data, the greyhound racing industry not only provides entertainment to the public but generates impressive revenues in the communities surrounding the tracks and to the kennel owners in addition to the track owners.

The NGA believes that Congress should view greyhound racing no differently than it views horse racing. Both sports usually are accompanied by pari-mutuel wagering on the outcome of the competition. An interesting fact is that the scheme of pari-mutuel wagering was divised for greyhound racing and later adopted by horse racing. We urge Congress to allow Indian Tribal governments the right to decide on what type of competition they want to allow pari-mutuel wagering. To allow State governments the right to decide that wagering is permissible on horse racing and not on greyhound racing results in Congress sanctioning and favoring one sport over another.

The greyhound industry and racing has a long and honored history. We are pleased that the time has come when Indian Tribes and their people have the opportunity to participate and benefit from the greyhound racing sport and industry. In furtherance of their participation we support House Bill 1920 as modified by the Santa Ana Pueblo draft Bill sumbitted by them in these hearings.

We appreciate your concern that organized crime is commonly associated with gambling activity. This has proven to be untrue as documented by the findings of the Commission on the Review of the Nation Policy Toward Gambling. and the national survey conducted by Bob and Barbara Freeman in 1982. Both of these documents are enclosed as exhibits to our testimony.

The NGA has offered its assistance to the Santa Ana Pueblo in developing its regulation for the Santa Ana Greyhound Park. This offer is extended to other tribes that may be contemplating a greyhound race track on their reservations.

Thank you for the opportunity to present our views on this important matter. We are happy to provide any additional information that may be helpful.

Very truly yours,

CAROL A. CONNOR & ASSOCIATES

Carol A. Connor

Carol A. Connor
Attorney at Law

CAC:jac

Enclosures

PREPARED STATEMENT OF CAROL A. CONNOR, ON BEHALF OF THE NATIONAL GREYHOUND ASSOCIATION

INTRODUCTION

The National Greyhound Association (NGA), a voluntary non-profit association operated in accordance with the laws of Kansas, is officially recognized by the entire greyhound racing industry--namely, all greyhound racetracks and individual racing jurisdictions, as well as foreign greyhound registries and governing bodies--as the sole registry for racing greyhounds on the North American continent. Organized in 1906, it has functioned in this capacity ever since the inception of greyhound track racing in this country some sixty-five (65) years ago. Membership of the NGA is comprised of the more than 4,500 greyhound owners and breeders whose greyhounds compete at tracks throughout the continent.

Records on all breedings, litters whelped, individual registrations, transfers, leases, etc. are maintained at the NGA's headquarters in Abilene, Kansas. The NGA's rigid identification system, the envy of other pari-mutuel racing and animal registries, has played an integral role in maintaining the sport's impressive reputation as a creditable, major spectator sport. It also is a primary concern and goal of the NGA to promote the improvement and development of the greyhound breed itself, through maintenance of pedigree and Stud-book records dating back to the latter part of the 19th century.

The NGA is an associate member of the World Greyhound Racing Federation and a charter and founding member of the World Alliance of Greyhound Registries.

See NGA booklet (Exhibit A) for more details about the NGA.

HISTORY OF GREYHOUND RACING

Ancient murals and paintings suggest that a dog strikingly similar to the greyhound of today was around some four thousand (4,000) years ago. As a vital hunter as well as the fastest canine breed, past or present, the greyhound has been the subject of art and lore throughout the ages. He was the source of sport and entertainment in the ancient civilizations of Egypt, Persia, Greece, Rome and later in England and Ireland. Pharoahs rated them first amoung all animals, both as pets and hunters. The birth of a greyhound in early Arabian culture was second in importance only to the birth of a son. Persians believe they were the only dogs allowed in the next world and privileged enough to give information or evidence against mankind. It is the only canine breed mentioned in the Bible (Proverbs 30:29-31), and it's a most complimentary reference, at that.

The greyhound arrived in America out of necessity in the latter part of the 1800s to assist farmers in the Midwest who were trying to save their crops from destructive jackrabbits, which could clean a field and put a farmer out of business in short order. Bred for thousands of years for that basic purpose, the greyhound met the challenge, and was soon found by American farmers to also be a great source of sport. In 1919, greyhound track racing--where a field of greyhounds pursues a mechanical lure around an oval track--was introduced, and a new spectator sport was born. Since then, greyhound track racing has become popular in such countries and territories as Ireland, England, Australia, Spain, Sweden, Italy, Mexico, Indonesia, Macau and

Guam. New tracks are projected shortly for the Dominican Republic and Venezuela.

Greyhound racing first flourished in this country in Florida, where night racing was introduced. By the mid-1960s greyhound racing, as a pari-mutuel sport, was still only conducted in seven states; thanks in great part to the strong lobbying efforts of pre-existing entertainment and sporting industries, particularly horse racing, to block its legalization. Where the sport had been adopted, however, it became obvious that it was a sucessful, burgeoning industry that provided substantial tax revenues as well as jobs for local residents--a most welcome business entity in these few states where it was conducted. Other states soon saw its benefits, and by 1985, fourteen (14) states are conducting pari-mutuel greyhound racing within their boundaries, with a number of other states eyeing its potential.

Despite operating in only 13 states in 1984, the Daily Racing Form's 38th Annual Survey of sports attendance ranked greyhound racing sixth among the Nation's leading spectator sports--behind horse racing, baseball, automobile racing, football and basketball--none of which was limited to operating in such a small number of states. Greyhound racing outdrew such spectator sports as hockey, wrestling, soccer, tennis and boxing. (See Exhibit B, Daily Racing Form's 38th Annual Survey)

CURRENT STATUS OF GREYHOUND RACING IN THE UNITED STATES

Despite economic hard times in the past decade, greyhound racing remains a viable, growing industry--which accounts for so many state jurisdictions turning to greyhound racing in efforts to try to spark new economic growth. The sport has shown it certainly can provide that spark.

Greyhound racing recently witnessed the opening of its 50th track on this continent at Dubuque, Iowa (June 1, 1985). Joining Iowa in offering pari-mutuel greyhound racing to its citizens are the states of Florida, Alabama, West Virginia, Massachusetts, New Hampshire, Rhode Island, Vermont, Connecticut, Arkansas, Colorado, Arizona, Oregon and South Dakota. Last year, 1984, more than 22.2 million people visited the 45 race tracks in these states, and wagered more than 2.4 billion dollars. This resulted in more than 176.4 million dollars revenue to the states and counties where racing was conducted. By comparison, twenty (20) years ago, 1964, 29.9 million dollars was generated in revenues to the states. (Exhibit C is a breakdown of pari-mutuel handle and attendance figures, by track and by state for 1984, as published in the Greyhound Review, April 1985, along with a map of currently existing tracks)

IMPORTANCE OF A GREYHOUND PARI-MUTUEL FACILITY. Generally, people, viewing a greyhound track, see its sole value in the monies received by the state from the percent of the pari-mutuel fund wagered. There are also monies received in many cases from admission taxes, licenses, sales taxes on racing programs, lost ticket funds, and breakage. Further, a track capable of sustaining a pari-muituel handle of more than $500,000.00 will employ a minimum of 600 people.

There is also an "area" impact. People will travel extended distances to view racing. Their use of local restaurants, hotels, filling stations and miscellaneous other activities contribute to a healthy gross income picture. Racing is also attractive to parties considering a locus for a convention of business meeting. Many people plan their vacations around a place with racing as well.

Some people fear that greyhound racing will have a deteriorating effect on other pari-mutuel activities in the same area. Yet in states where horse and greyhound racing have co-existed for years--including Arizona, Arkansas, Oregon, Florida and Massachuttes--there is no evidence of a detrimental impact. In fact, with one usually racing in the day and the other at night, the two very much complement each other. A well coordinated schedule of racing will serve to attract rather than detract from either industry.

GREYHOUND BREEDING INDUSTRY. To supply the greyhounds to race at these fifty (50) racetracks in the United States and Mexico, greyhound owners throughout the continent breed and raise more than 5,000 litters of pups a year, according the NGA figures. Last year, 1984; 26,348 greyhounds were individually registered with the NGA.

Each of these greyhounds represents a sizeable investment on the part of the owner--as much as $1,500.00 to raise a pup to track-age (18 months old), which does not inlcude the cost of purchasing the breeding stock. The greyhound farms have become a significant operation in an economic sense, with a growing number of breeders sprouting in any new state or area that adopts greyhound racing. The economic impact of the greyhound breeding industry in one state, Kansas--which does not have pari-mutuel wagering--is an example of the positive economic effect greyhound racing can have on an area. (See Exhibit D)

MISINFORMATION ABOUT GREYHOUND RACING

Because greyhound racing is conducted in a limited number of states and very few major media markets, many people are not familiar with the sport. It's only natural, therefore, that there would be some misconceptions about the sport in the minds of those not acquainted with it.

The following question-answer sequence is intended to clear up some of the more common misconceptions about the sport.

QUESTION:

> DOES THE PUBLIC HAVE PROTECTION FROM "RIGGED" OR "FIXED" RACES?

ANSWER:

> In its August 27, 1973, issue in a feature story on greyhound racing, Sports Illustrated wrote, "The dogs are America's best bet. Dog racing is without doubt the most honest sport in the world. There is no way to fix a dog race. The security around the kennels and tracks make it impossible now. Greyhounds being more honest than people, the races are as clean as a hound's tooth." Greyhound racing's clean record and the glaring lack of any scandals since this report (in contrast to the records of other pari-mutuel racing sports) is a big reason why the sport continues to expand. The rigid supervision and maximum protection agsinst fraud make greyhound racing the finest, fairest, and best conducted of all forms of competitive sports. There are no jockeys or drivers involved in the running of a race to control the actions of the animals. Control over a racing greyhound begins before its birth at the time its sire and dam are brought together for breeding purposes. Full identification of contestants first intorduced by the NGA is now an adopted, standard practice by the horse racing industry. Greyhound racing also was the first to develop and use such equipment as electric starting boxes (gates), electronic timing, photo-finish camera, and lock-out animal facilities. Before a dog goes to post, it is checked 11 times. In horse races, unless someone is a knowledgeable horseman, it would be difficult to determine whether or not a horse is lame and to what degree it would effect his performance.

Greyhounds are checked for weight, their paws and nails for soreness, and their limbs for physical fitness. The paddock judge and the veterinarian physically examine greyhounds to make sure they are competitve.

QUESTION:

DOESN'T GAMBLING PREY ON THE POOR AND UNEDUCATED?

ANSWER:

According to the Second Interim Report on the Commission on the Review of the National Policy Toward Gambling, published in 1976, "Four percent of the adult population--5.8 million people--bet on the dog races that year, 1974. Betting at tracks tended to increase as income and educational levels increased. As was the case with all forms of gambling, most respondents attached relatively little importance to adverse moral or social consequences of betting." Surveys repeatedly show that most people who gamble can afford to do so. The Los Angeles Times, in editorial opposition to a California state lottery, conducted a survey of gambling activities in eastern states and on November 8, 1973, concluded: "Although all income groups participate to some degree, the lotteries have ot penetrated the poorer areas in most cities, and the larger appeal seems to be the middle-class buyer..."

Unfortunately, the compulsive gambler can always find a place to gamble, just as an alcoholic can always get a drink. Legislation banning these activities not only has proven disastrously unseccessful, but instead of protecting these individuals they are driven to back-room illicit sources away from regulation. the Volstead Act (Prohibition) was the spawning ground of todays organized crime syndicate. Thousands of normal hard-working taxpayers find moderate gambling an enjoyable, entertaning way to relax. (See Exhibit E)

QUESTION:

ARE MOST PEOPLE OPPOSED TO LEGALIZED GAMBLING?

ANSWER:

In a survey conducted in 1976 by the Commission on the Review of the National Policy Toward Gambling, eighty percent (80%) ofthe respondents said they favored legalization of some form of gamlbing. Once a particular form of gambling has been legalized there is overwhelming support its continued operation, the report stated.

QUESTION:

IS THE COST OF GAMBLING SOCIALLY DETRIMENTAL?

ANSWER:

The amount of money not returned to players is called takeout. The total amount of money lost in 1984 by gamblers as a group legally and illegally amounted to 4.4 billion dollars--the same amount spent by consumers on cigarettes and tobacco.

QUESTION:

ARE GREYHOUND RACES CRUEL?

ANSWER:

Absolutely not. The greyhound loves to run and is the speediest of all dogs, having been clocked at speeds in excess of 40 miles per hour. The animals are never in any danger to either themselves or to the people involved. They wear muzzles during races so in a close finish, judges can easily detect the ends of the white muzzle on a photo to determine the outcome. They're muzzled in the turnout pens because they are often turned out in large numbers, and the muzzles prevent any chance of injury from overzealous play. These dogs are marvelously gentle, never bite unless extremely provoked, and make wonderful house pets for children. The greyhound is a docile and intelligent dog with speed, endurance, courage, persistence and strength.

QUESTION:

ARE GREYHOUNDS STARVED OR MISTREATED IN ORDER TO MAKE THEM RUN FASTER?

ANSWER:

This is one of the most ridiculous misstatements ever made about the sport. Could it ever make sense to anyone that a starving, mistreated greyhound will run faster than one that's well nourished and in superb contition? Greyhound owners and trainers pride themselves in the manner in which they feed and treat their greyhounds. In this competitive sport, this type of treatment is mandatory, and those who do less than an exemplary job soon find themsleves unable to compete and consequently out of the business. Like any athlete, the greyhound requires special care and attention if they are expected to do their best, and that is exactly what they receive.

NATIONAL GREYHOUND ASSOCIATION REPORT ON ANIMAL WELFARE ISSUES

"The humane issue is an emotional one, easily clouded with half-truths and misconceptions. Our sport is misunderstood by some, especially those who have not taken the time to adequately research it." So stated the Professional Rodeo Cowboys Associaiton in a policy booklet in 1982. The exact same thing can be stated about greyhound racing.

Humane groups have been quick to criticize greyhound racing. To a large extent these independently funded spokespersons are also a special interest, in that fund raising warrants a degree of sensationalism. Real life accounts become distorted. Half-truths abound and statements are quoted out of context.

The mere unsubstantiated charges of extreme cruelty bring unfair attention to a sports entertainment that prides itself in the care and attention afforded to the charges made against it.

We in the greyhound industry have patiently endured this one-sided adversary that pressures us to change. They will never support greyhound racing and choose instead to embellish on charges of animal exploitation. We share the guilt with sled dogs, hunting dogs, and all other working breeds by happily exploiting the greyhound's natural desire to run, chase and compete--what this finely bred animal loves to do most of all--is to the economic gain of all involved.

In a sincere desire to improve the manner in which greyhound racing is conducted, industry leaders--including officials from the NGA--met on several occasions with officials with the Humane Society of the United States (H.S.U.S.), the organization that seemed to be the most critical of greyhound racing, with the hope that open discussion, and constructive suggestion would benefit all concerned. After a few meetings, it became very clear that nothing short of a total elimination of greyhound racing would satisfy H.S.U.S., made perfectly clear in a statement by H.S.U.S. President, John Hoyt, to a group of greyhound track operators in 1984:

> "But under no circumstance, no matter how significant the changes and improvements made, will greyhound racing as now practiced by approved or endorsed by those within the animal welfare rights movement."

With this kind of attitude, it is easy to understand the H.S.U.S. and similar groups are willing to cite the most isolated instances as if they were common practices, and stoop to whatever tactic is necessary to discredit our industry.

Consider the two major complaints by H.S.U.S.--namely, the training methods of greyhounds, and the "putting down" of greyhounds when they are not useful for racing.

As for the training procedures, you'll recall that the greyhound was first brought to this country to help rid farmers of the jackrabbits that destroyed crops. For decades this was most acceptable, but a changing attitude toward such practices are now causing owners, breeders and industry leaders to look to other methods of training.

In 1982, the NGA made an official policy statement, encouraging its membership to pursue artificial training methods. Clearly, the trend in the past five years in our industry has been in that direction. The NGA has also made recommendations in this area. In 1983, the NGA in conjuction with the American

Greyhound Track Operators Association (AGTOA), produced a film promoting the use of artificial training procedures--a film that has not only been widely accepted within our own industry, but that drew praise from Hoyt himself: "I think the film that was made is an excellent film. I hope it's being well received by the trainers....This is precisely what we would love to see happen."

As for H.S.U.S.'s second major criticism, of greyhounds being "put down" that are no longer useful for racing--it's interesting that a common quotation used by H.S.U.S. is one by a Mr. Richard Kiper, who supposedly stated that "approximately fifty percent (50%) (of the greyhounds) are killed before ever reaching a real track." Kiper, who himslef was barred from racing for a conviction in the 1970s for grand larceny, arson and his alleged killing of 24 greyhounds in another person's kennel, could hardly be called a reliable source of information, considering his obvious vendetta toward racing. H.S.U.S. knows that, but still the quote is used. (See Exhibit F)

The fact of the matter is--if more than half the greyhounds are killed before they reach track-age, then why are more than 26,000 of the 32,000 pups litter registered each year individually registered--the signal they're ready for the track? (Of those not registered, some have died have diseases such as parvo; many are given away as pets.) It is another instance where the H.S.U.S. will use false information in order to discredit this sport.

Once their racing careers are over, many greyhounds are retired to the farm for breeding purposes. Still others are give to good homes as pets--something that's happening with greater frequency the past five years, thanks to the efforts of such organizations as REGAP (Retired Greyhounds As Pets).

As with horse racing or other professional sports involving animals, when there is no other alternative, greyhounds are put to sleep. It should be noted however, that this must be done in a humane fashion, as prescribed by the humane societies--that is, no differently than the manner in which they put to sleep 15 to 20 million cats and dogs each year in this country. If inhumane methods are employed, the offender will be dealt with by the governing bodies of racing, including NGA and AGTOA, which could mean permanent expulsion from greyhound racing.

The NGA also takes great pride in ensuring that greyhounds are properly cared for on the farms throughout the country. On those rare occasions when neglect has occurred, the NGA has moved swiftly in seeing to it that offenders are not permited to handle racing greyhounds again.

Is the greyhound exploited? Certainly he is--just as animals involved in horse racing, harness racing, coon dog hunting, any kind of hunting, fishing, animals in zoos, rodeo animals and animals that were necessary to put food on the American supper table are exploited. If H.S.U.S. is against exploiting animals for the benefit of man--which is the underlying reason they will always oppose greyhound racing--then few activities will escape their criticism. But if the question is, are these same greyhounds treated humanely, then the answer is a resounding yes.

ENFORCEMENT & REGULATION

A common concern of people in any area that's considering the adoption of some form of gambling or pari-mutuel wagering is whether this might attract new criminial elements to the area, or increase the rate of crime. Surveys conducted over the years indicate strongly that such is not the case.

A California proponent of greyhound racing, for example, ten years ago surveyed the existing 38 operating greyhound racetracks and found that police statistics in those areas indicated no significant increase in crime, including bookmaking, when the local track is in operation. Copies of the responses from the police chief and other law enforcement officers in that survey are offered for your consideration as Exhibit G.

Another survey worth considering is taken from "National Pari-mutuel Statistical Report 1981" by Bob and Barbara Freeman. This survey indicates that the likelihood of increased crime rate as a result of a racetrack in the area is not significant. (See Exhibit H, pp. 33-43). A complete copy of the Freeman report is attached for your consideration.

Unquestionably, any pari-mutuel operation, including greyhound racing, needs to be closely regulated, for the sake of protecting the public as well as those whose livelihood are dependent on the industry. On of the reasons greyhound racing has been able to continue its growth pattern is because of the marvelous record it has in this area. The problems of scandals involving so-colled "ringers", or race-fixing by jockeys are just not existent in greyhound racing. While the state racing commissions can take some of the credit for it, we must point out that many of these same racing commissions cannot boast of the same clean record of other pari-mutuel sports within their jurisdictions. We contend that there is something inherently a part of greyhound racing that makes it less subject to the scandals and problems that have plagued our brothers in the pari-mutuel industry. We contend that greyhound racing is an easier sport to enforce, first because of the lesser human element involved in greyhound racing; and secondly, because of the methods of safeguarding the sport that have become standardized over the years these methods include race-testing, the NGA's identification system, and the regulatory procedures that have been employed for the sake of protecting the sport's integrity.

There are two primary areas of concern involving regulation in the pari-mutuel facet of the sport and the actual racing segment of the sport.

As far as the pari-mutuel facet is concerned, there are standard operating procedure at most racetracks, regardless of whether the Contest is harness racing, thoroughbred racing, greyhound or jai alai. The fact that problems are practically non-existent in this area at whatever kind of sports facility is in question indicates that regulation methods employed are very adequate--whether they're being administered by state racing stewards, county racing stewards, etc. (And that could easily include tribal racing stewards as well.)

Regulation of the racing, however, is a different matter and this is what separates greyhound racing from other pari-mutuel sports. The methods of controlling and regulating racing are very systematic and the track record clearly show that it is also very effective.

All dogs, for example, drawn for a race must be turned over to the kennel master at least two (2) hours before the race commences. Many jurisdictions require all racing dogs in the track kennel by 6:00 p.m. on race night. The paddock judge checks the identification markings (the Bertillon system and ear tattoo) and sees that the trainer has collar-tagged the dog with the correct race number and post position. The paddock judge locks the dog in the correct kennel, gives the key to the kennel master and leaves. These confinement kennels generally are air-conditioned, temperature and humidity controlled enclosures, and are in full view of the public at the track. The kennel master is the only person allowed in the confinement area once the dogs have been locked up until the race starts. Approximately 12 minutes before each race the kennel master unlocks each kennel, turns the dogs over to the kennel attendants (or lead-outs) who muzzle and blanket the dogs, and walk them around the saddling path. No attendant ever knows in advance what race or dog he will handle. A pre-race sample of urine is taken to detect chemicals in the system. Regarding weight, a variance of more than 1 1/2 pounds causes disqualification of that dog. The greyhound is scratched and the trainer fined for not maintaining the proper weight. Because of this, it is impossible to over-feed, starve, or dehydrate a dog. The only exception to this is the case of some dogs who are exceptionally nervous, known as "fretters" who are given a 2 pound allowance. These controls and procedures and the visual examination of dogs during the post parade, when they are on the track for aobut 10 minutes before the race in full view of the public, insures that the interests of betting public are safeguarded.

The use of drugs in racing is another regulatory concern. Again, greyhound racing has shown itself to be head and shoulders above other racing sports--perhaps because it does not allow the use of such drugs as phenylbutazone and Lasex that have caused such great controversy in horse racing. The Association of Official Racing Chemists' 1984 report, as published by the National Association of State Racing Commissioners pretty much tells the story. Horse racing in the U.S., with 448,171 samples taken, 1,274 of them coming up positive. For greyhound racing, 121,588 samples taken, only 46 positives. (See Exhibit I)

As sports Illustrated said in that 1973 article cited earlier: "The dogs are America's best bet. Dog racing is without doubt the most honest sport in the world." Public confidence in the sport is certainly an indication of that. Figures from the National Association of State Racing Commissioners show that in every state where horse and greyhound racing were conducted, the greyhounds drew more people to the races than did the horses. This speaks well of the public's confidence in the manner in which greyhound racing is capable of being regulated.

CONCLUSION

The National Greyhound Association perceives the proposal to place a greyhound racing facility on Indian Reservation land as an exciting and unique opportunity for the economic growth and development of the tribes involved, as well as furthering the growth of our great industry. We are very pleased to participate in this process.

As the oldest established organization in the greyhound industry, the NGA has seen the development of this industry from its outset, has witnessed its growth, has observed the manner in which it is regulated--and, of course, has participated in that regulation--and has seen the benefits that have been derived from it, both economically and socially. With full confidence that the tribes can and will regulate the operation of greyhound racing, we go on record as being unequivocally in favor of racing on Indian Reservation land under their jurisdiction.

As pointed out in this report, state and county regulatory agencies have done an excellent job in regulating the sport. There is no reason whatsoever to believe that a tribal regulatory agency would not have the same success.

The prospect excites us. We at NGA have a unique opportunity to assist the tribe at the inception of their commission and to work with them in promulgating rules and regulations that will benefit greyhound racing. The Santa Ana Tribal Racing Commission has asked NGA for assistance in developing its regulations. We enthusiastically agree and offer assistance in that undertaking.

Our support for such a proposal does not come lightly. You can be sure that if we were not confident that the tribal commission could properly regulate our sport, we would not offer this strong endorsement. The NGA and the owners and breeders of the greyhounds in our sport would have much to lose were the sport discredited in any way by a less than creditable racing operation.

There is considerable economic benefit to be gained for the tribes by pursuing a greyhound racing facility. Current greyhound racetrack operators around the country are aware of the fact, and are very much opposed to what it calls "unfair competition" by possible tracks on tribal lands. One longtime track operator, who has pocketed millions from the sport over the years, blasted the Indian's proposal at a convention in March in Orlando, Florida, strictly on this notion of unfair competition. We contend that, because of the economic benefits from the sport, it should make a great deal of difference that the Indian Tribes and their people will be the ones make these sizeable profits as well as the non-Indian beneficiaries of the sport.

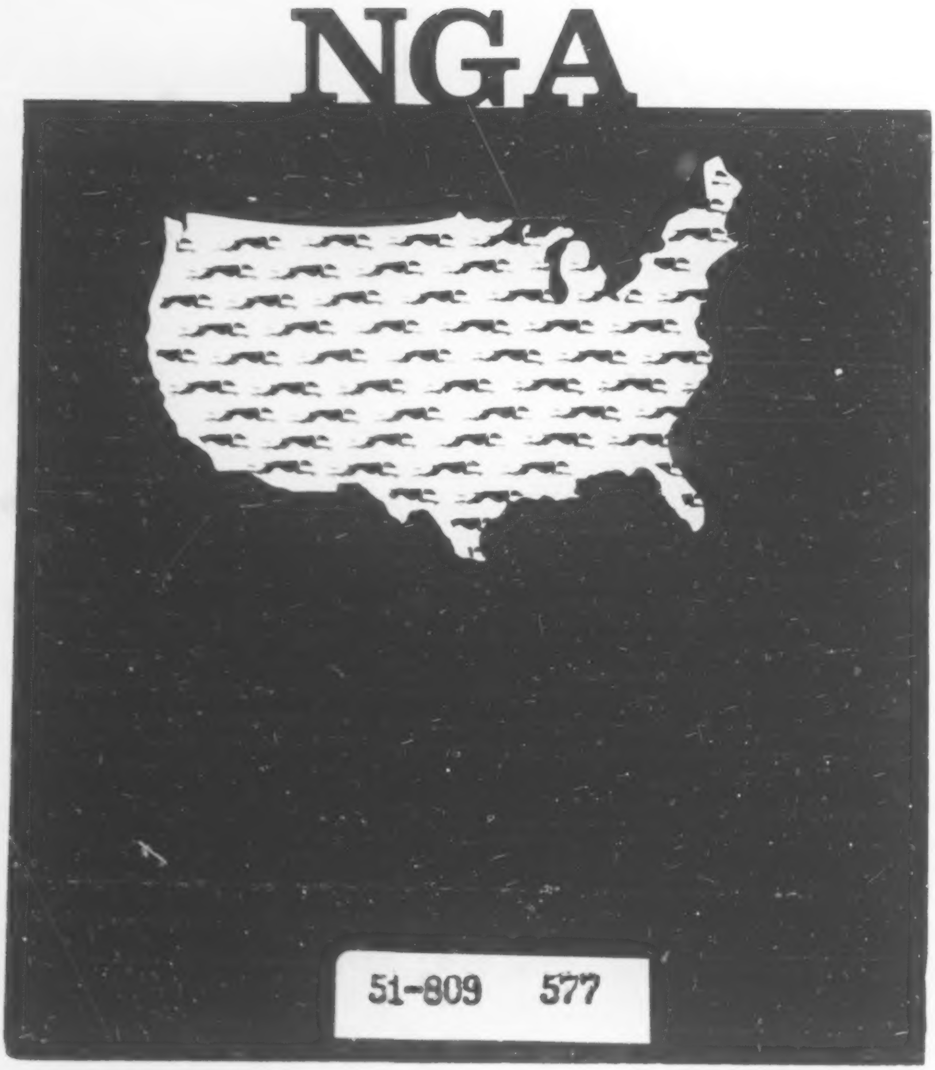
It seems to us that all the Indians are asking for is an opportunity to compete fairly as a pari-mutuel establishment, and that under our system of government, they ought to be afforded that opportunity.

* * *

FOOTNOTE: Please do not confuse the National Greyhound Association (NGA) with the American Greyhound Track Operators Association (AGTOA). The NGA mandates growth and prosperity for all greyhound breeders and the industry itself. The American Greyhound Track Operators Associaton is interested only in growth that will benefit its member track operators, and have repeatedly opposed new legislation. They are, by their very nature, private economic entities, advancing only their own private goals.

National Greyhound Association

EXHIBIT A



National
Greyhound
Association

Phone (913) 263-4660 • P.O. Box 543 • Abilene, Kansas 67410

Dear friends of the greyhound:

If you're a newcomer to the sport, welcome to the exciting world of the greyhound–the true royalty of the canine family, certainly one of nature's most graceful and beautiful works of art. If you've been a greyhound owner for some time, we extend to you an equally warm hand of friendship.

Because of your involvement with greyhounds–whether you own one or 100–you will on occasion find need to use the services of the National Greyhound Association, the official registry for the greyhound racing industry on the North American continent. For the purpose of making your future dealings with us all the more pleasant, this booklet will acquaint you with registry procedures and other aspects of the NGA. In return, we will be able to provide you with speedier, more efficient service.

We are here to serve you. We want you to know that we care about doing things right, and care about treating you the way you expect to be treated. As an owner of the noblest of canines, you have every right to expect the very best, and that includes the best in service. It is our job to see that you get it. If we fall down in any way, please let us know, and we will correct it–immediately.

Once again, welcome, and may all your endeavors in the sport be rewarding.

Sincerely,

Gary Guccione

Secretary-Treasurer
National Greyhound Association

Established in 1906

This booklet is designed to help the greyhound owner better understand the purpose and function of the National Greyhound Association, and how to derive the most benefit from it. You'll want to keep this booklet handy, and refer to it whenever you need the NGA's services.

The NATIONAL GREYHOUND ASSOCIATION
P.O. Box 543
Abilene, Ks. 67410

Phone: 913-263-4660

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The NATIONAL GREYHOUND ASSOCIATION

Its Purpose

"Objects. The Association shall have jurisdiction over all matters pertaining to the breeding and registration of greyhounds in North America and the Canal Zone. The Association shall maintain a registry which shall keep records of the breedings, litters and individual registrations of all greyhounds whelped in or imported into North America and the Canal Zone. The Association shall be concerned with the improvement and development of the greyhound breed."

—ARTICLE 1, Section 3, NGA By-laws

The National Greyhound Association, as the official registry for the greyhound racing industry on the North American continent, has played an integral part in maintaining the Sport Of Queen's clean reputation as a parimutuel sport. Its concise and efficient registration system has been a vital asset to the various state racing commissions, to the more than 45 greyhound tracks across America, and especially to the more than 5,000 greyhound owners and breeders that use its services, either as members or non-members. The NGA's rigid identification system, the envy of other parimutuel racing and animal registries, has been the major instrument in safeguarding greyhound racing from scandal and the sort of fraudulent practices that have tainted the image of other segments of the racing industry.

One reason the NGA is able to function responsibly and expeditiously as a registry is because the Association is operated by and under the jurisdiction of the people who are closest to the greyhound—the owners and breeders themselves. Hence, the NGA is in the ideal position to recognize problems that arise in the sphere of the greyhound registration and identification processes, and immediately correct them.

In large part due to the NGA's performance record as a registry, greyhound racing has built itself a reputation of responsibility and trust. As a result, greyhound racing is the seventh largest spectator sport in America, and still rapidly growing.

Its Roots

Records maintained by the National Greyhound Association that were handed down from its parent organizations represent the oldest official documents of registration and breeding information on greyhounds in America, dating back to the latter part of the 19th Century. The NGA's immediate predecessor, the National Coursing Association, harbored the stud books, pedigrees and records of the very first greyhound registry in this country, the American Coursing Board, which dates back to 1894. Organized at Friend, Nebr., on Oct. 9, 1906, the NCA began publishing the annual Stud Book and a quarterly magazine known as "The Coursing News."

The NCA established permanent residence in Abilene, Ks., in 1945. The present site of the NGA office building and headquarters, located two miles west of Abilene on Highway 40, was acquired in 1961.

The name of the Association was officially changed to the National Greyhound Association in 1972 by an amendment vote of the membership. The name of the monthly publication, "The Coursing News," was changed to "The Greyhound Review" at the same time.

Its Structure

The National Greyhound Association is a voluntary, non-profit sharing association operated in accordance with the laws of Kansas. It is also officially recognized by the entire greyhound racing industry–namely, the National Association Of State Racing Commissioners, each individual state racing commission and race track, as well as foreign greyhound registries and governing bodies–as the sole registry for racing greyhounds on this continent.

The NGA is governed by a 15-man Executive Committee, elected by the NGA membership from regional subdistricts. Each of these 15 subdistricts is represented by one committeeman, elected for a three-year term, with the election for five committee seats held in the fall of each year. The Executive Committee subsequently elects the Association's president and vice president from its own ranks for one-year terms. Consult the list at the end of this section to see in which subdistrict you reside. If for any reason you'd like to contact the Executive Committee from your subdistrict, addresses and phone numbers are available through the NGA.

The NGA Constitution and By-laws are printed in the March issue of "The Greyhound Review" each year. Copies of the Constitution and By-laws are available upon request.

MEMBERSHIP. Voting privileges in the NGA are reserved strictly for members. To apply for membership one must submit an application form and signature card, along with initiation fee of $100 and annual dues of $20. If dues are not paid the first six months of any given year, another initiation fee of $100 is required for membership.

Membership in the NGA is not required to use the registry. However, some benefits to members include reduction of $15 per unit of business for registrations, automatic subscription to "The Greyhound Review," as well as 50 percent reduction of advertising rates in the Review. Persons who've been members for 50 years or more are presented complimentary memberships. Non-members must complete a non-member application form and signature card before using the registry.

NGA SUBDISTRICTS

DISTRICT 1

Subdistrict 1A: South Florida (Districts I and II as geographically delineated by Florida Greyhound Association boundary map, 1973)

Subdistrict 1B: Central Florida (Districts III and IV as geographically delineated by Florida Greyhound Association boundary map)

Subdistrict 1C: North Florida, Puerto Rico, Mississippi, Alabama, Georgia, South Carolina.

DISTRICT 2

Subdistrict 2A: Massachusetts, Rhode Island, Vermont, New Hampshire, Maine, Connecticut, England, Canada, Ireland, Scotland, and any other nation or country not heretofore or hereinafter designated within a subdistrict.

Subdistrict 2B: New York, New Jersey, Pennsylvania, Maryland, Delaware.

Subdistrict 2C: Michigan, Indiana, Ohio, W. Virginia, Kentucky, Tennessee, Virginia, N. Carolina, District Of Columbia.

DISTRICT 3

Subdistrict 3A: East Texas (members residing east of Highway 281, drawn from Wichita Falls to Pharr).

Subdistrict 3B: West Texas (members residing west of aforementioned Highway 281).

Subdistrict 3C: Arkansas, Louisiana, Oklahoma.

DISTRICT 4

Subdistrict 4A: Colorado, Wyoming, Montana.

Subdistrict 4B: Nebraska, Wisconsin, Minnesota, Illinois, Iowa, North Dakota, South Dakota.

Subdistrict 4C: Kansas and Missouri.

DISTRICT 5

Subdistrict 5A: Arizona, New Mexico, Nevada, Utah.

Subdistrict 5B: California, Hawaii, Australia.

Subdistrict 5C: Oregon, Washington, Idaho, Alaska.

The REGISTRY

A full-time office staff, under the direction of the Keeper of the Stud Book (NGA Secretary-Treasurer), oversees the Association's vital function as a registry.

The NGA Office is open 8 a.m. to 5 p.m. (Central Time Zone), Monday through Friday, throughout the year (except major holidays). Phone numbers should be included in all correspondence in the event a problem with any registration matter can be rectified by phone, thereby preventing delays.

The various NGA registrations and their fees are listed herein. Applications for all registrations are available through the NGA.

NOTIFICATION OF BREEDING. This application must be forwarded by the owner or lessee of the sire to the NGA within 10 days after the mating, with the bertillon of the female bred completed on the back. Delinquent notifications are subject to penalties: $20 for 1 to 30 days; $100 for 31 to 120 days; $200 for 121 days to a year. Any Breeding Notification delinquent more than one year will not be accepted. Breeding Notification fee is $5 for members, $20 for non-members. Upon acceptance of the application, a Breeding Acknowledgement is issued to the stud dog owner and the owner or lessee of the dam. If no such acknowledgement is received within two weeks, owner or lessee of sire should contact the NGA immediately to avoid delinquent penalties.

Most frequent errors:

- *Submitting reports with incorrect owner of dam listed. Person should be sure that the female is in his name, or that he has a lease recorded in his name.
- *Submitting incorrect fee, especially when breeding to a female owned by a non-member. Even though stud owner may be a member, the non-member fee of $20 applies in this case.

NOTIFICATION OF BREEDING

To THE NATIONAL GREYHOUND ASSOCIATION
Box 543 Abilene, Kansas 67410

FEE $5.00
Non-member
$20.00

John Doe (name of owner or lessee of dam) St. P.O. Box 4

Town Denver State Colo.

W & Bd. (color) bitch Visiting May (name of bitch) was bred to my

stud dog Great Host (name of sire) on the 10th day of

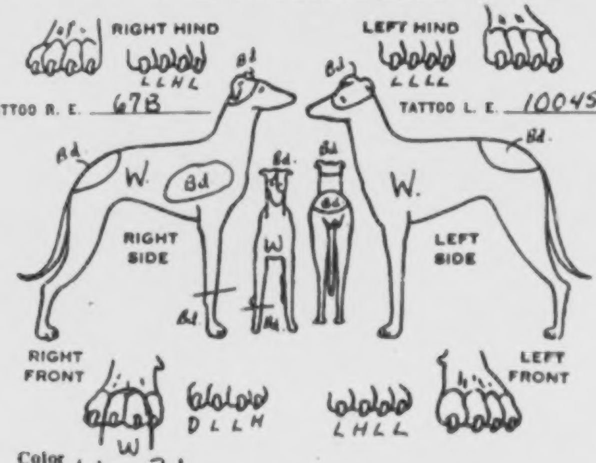
May 1982

Name of Owner of Sire Bill Jones

Address Rt. 4, Phoenix, Az. 85029

(reverse)

N. B. – The rules require that the Owner of the Sire notify the Keeper of the Stud Book of a breeding within 10 days from date of breeding, and a receipt will be issued to the owner of the sire for a fee of $5.00 – non-member $20.00. Owner of the Sire to mark Bertillon of Female Mated on the back of this form.



Color W & Bd.

Frozen Insemination

A special section of the registry was established in 1981 for the registration of Frozen Insemination breedings. Storage and collection facilities must first be inspected and approved by the NGA; Inseminators must also meet NGA approval. A stud dog must be separately registered under the program and subsequently issued a frozen insemination (F.I.) identification number that will appear on all vials and straws of frozen semen from that particular sire.

More detailed registration procedures and applications for the F.I. program are available through the NGA upon request.

LITTER REGISTRATION. Tattooing is the cornerstone of the NGA's identification system, and all litters must be tattooed and litter registered within 90 days of whelping.

The color, markings, distinguishing features and tattoo numbers of each pup must be shown by bertillon on the Litter Application. A Litter Acknowledgement is issued to the owner upon completion of the application. If no such acknowledgement is received within two weeks, the owner should contact the NGA immediately to avoid substantial delinquent penalties. Fee for Litter Registration is $5 for members, $20 for nonmembers.

Errors made in tattooing are subject to penalties: $5 per pup at time of Litter Registration, $25 if not reported until pup is individually registered. (Errors include the substitution of I's for 1's, B's for 8's, etc., and vice versa.) Delinquent Litter Registrations are subject to penalties: $20 for 1 to 30 days; $100 for 31 to 60 days, and $200 for 61 days to 1 year. Any Litter Registration delinquent more than a year will not be accepted.

Frequent errors:

*Failure to check that the number of males and females designated on the front of the form corresponds with the number bertilloned on the back.

*Not perforating the application properly with the tattoos. (Written notations will not be accepted.)

*Using the letter "B" for a color, which is not distinguishable from Be. (blue), Bk. (black) or Bd. (brindle).

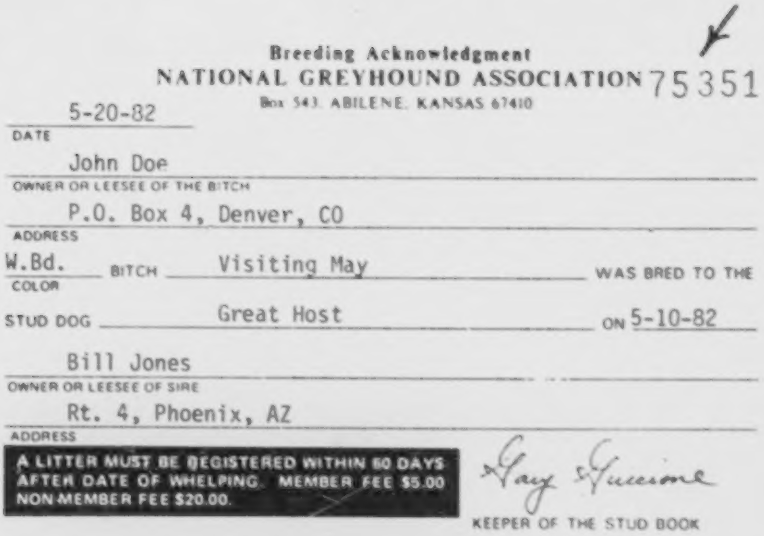
*Failure to include all the pups on the Litter Application. Any pups omitted cannot be added in once the litter is acknowledged.

Tattooing Instructions

The most common error with Litter Applications involves the tattooing itself, and special care should be taken to ensure that pups are tattooed properly.

A Weston Tattoo Outfit, which includes a tong, two sets of numbers (0-9), a set of letters (A-L) and ink, is recommended. An additional tong will reduce the chance of error, since one tong can be set up for each ear. By marking the handle of one of the tongs, you can help avoid using a tong in the wrong ear. All tattooing equipment is available through the NGA.

The numbers and letters tattooed in the pup's right ear should show the month of whelping and identify the individual pup in the litter. For example, the first pup tattooed in a litter whelped in July 1982 reads 72A, the second pup tattooed reads 72B, the third 72C, etc. The numbers tattooed in the pup's left ear should correspond with the numbers in the upper right hand corner of the Breeding Acknowledgement. If pups are ill at tattoo time and unable to be tattooed, the owner should contact the NGA before the required date, and a two-week extension can be granted.



Breeding Acknowledgment

NATIONAL GREYHOUND ASSOCIATION 75351

Box 543, ABILENE, KANSAS 67410

5-20-82
DATE

John Doe
OWNER OR LEESEE OF THE BITCH

P.O. Box 4, Denver, CO
ADDRESS

W.Bd. BITCH Visiting May WAS BRED TO THE
COLOR

STUD DOG Great Host ON 5-10-82

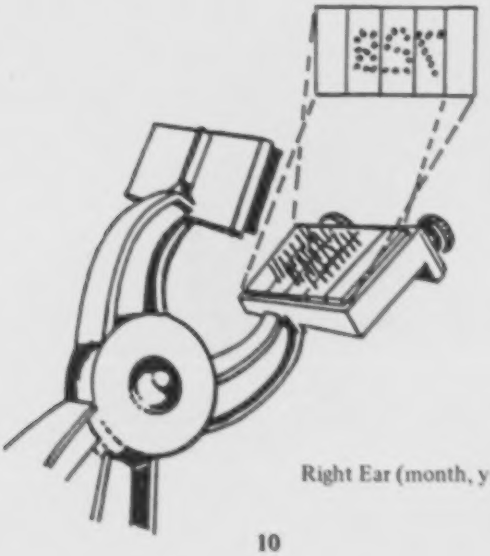
Bill Jones
OWNER OR LEESEE OF SIRE

Rt. 4, Phoenix, AZ
ADDRESS

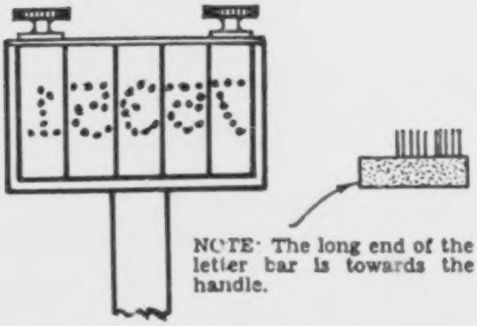
A LITTER MUST BE REGISTERED WITHIN 60 DAYS AFTER DATE OF WHELPING. MEMBER FEE $5.00 NON-MEMBER FEE $20.00.

Gary Guccione
KEEPER OF THE STUD BOOK

To be sure numbers are correct when setting up, check them by perforating a piece of paper. Try the tong on several sheets of paper at one time to give yourself an idea of the pressure necessary to perforate the ear.

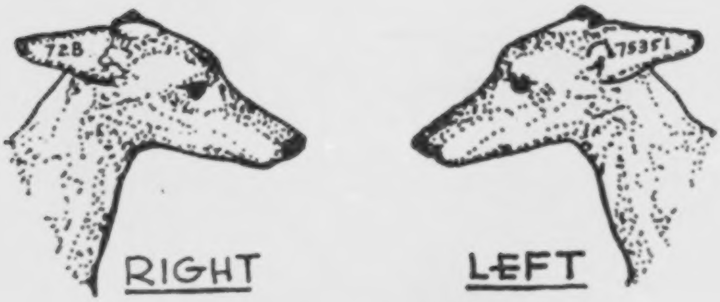


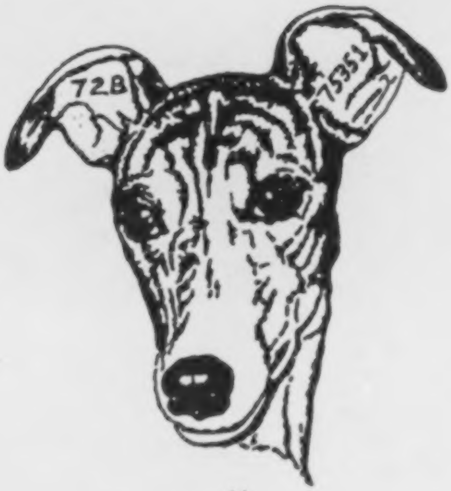
Right Ear (month, year, letter)



NOTE: The long end of the letter bar is towards the handle.

Left Ear (taken from Breeding Acknowledgement)





When using one tong: Set up the tong for the right ear first (number for month, last number of year and the letter A) and perforate the Litter Registration form where indicated for the first pup. Mark the pup on the form in detail, then perforate the ear, apply the ink and rub in well. Change the letter from A to B, perforate the Litter Registration paper for the second pup, mark up the second pup and perforate the ear. Repeat the procedure for the rest of the litter, remembering to change the letter with each pup. After completing the right ear tattoos and marking the pups on the Litter Registration form, set up the tong for the left ear (numbers taken from the Breeding Acknowledgement). Check the number for accuracy, perforate the Litter Registration form where noted at the bottom, then perforate the left ear of each pup.

When using two tongs: Set up one tong for the right ear (beginning with the letter A) and one tong for the left ear, and check both for accuracy. Perforate the Litter Registration form at the edge with the right ear tong, and at the bottom with the left ear tong. Mark the first pup on the form and tattoo the right ear. Then tattoo the left ear with the other tong. Change the letter in the right ear tong, and proceed with the next pup.

When tattooing, turn the ear back and place the numbers over the center part of the ear where there is no hair. Check the exact position of the numbers before pressing them into the ear. With a sharp squeeze and quick release the numbers should appear as those shown below. After tattooing each ear, apply the ink and rub in well.

Vol. ______
Do not write in this space

No. ______
Do not write in this space

Application for Registration of Litter

NATIONAL GREYHOUND ASSOCIATION
BOX 543
ABILENE, KANSAS 67410

REGISTRATION FEE $5.00
NON-MEMBER REGISTRATION FEE $20.00

Rules Governing the Registration of Litters

The mating of the sire and dam must have been reported within ten days.
The sire and dam must be registered with this Association.
The litter must be registered in the name of the record owner of the dam or registered lessee.
A litter must be registered with this Association within sixty days after whelping.
Pups must be tattooed within sixty days of whelping.
Perforated tattoos must be shown on back of this form.

Date of Breeding May 10, 1982 Date of Whelping July 11, 1982 No. of Dogs 2 No. of Bitches 3

John Doe Address P.O. Box 4, Denver, Colo. 80222
(Owner or Lessee of dam at time of breeding.)

Sire Great Host . ______ . ______ . Tell It Right Steffie
Color Vol. Grand Sire Grand Dam

Dam Visiting May . ______ . ______ . Pioneer Guy Visiting Mabel
Color Vol. Grand Sire Grand Dam

I certify that the information herein furnished and the description of each puppy given on the reverse side of this application is correct to the best of my knowledge and belief, and hereby apply for registration of the above litter in my name.

Name Mary Smith
Owner of dam and litter (or registered lessee) at the time litter was whelped.

Address 21 Madison Ave, Miami Beach, Fla 33181

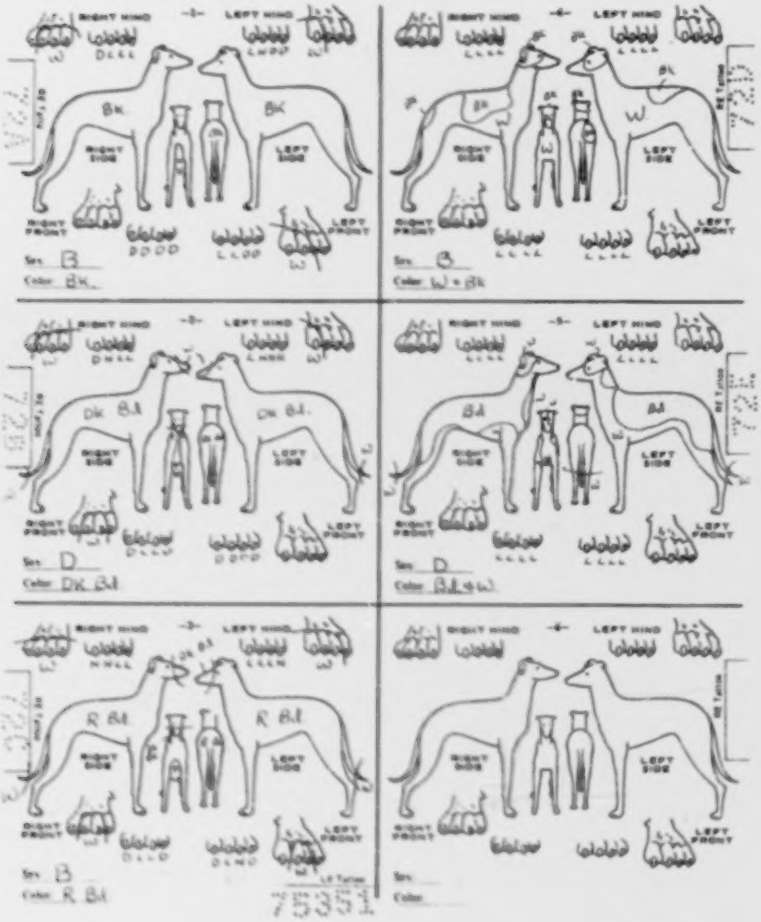
Give color, sex and an accurate description of each puppy on the reverse side of this application.

[illegible] be abbreviated as follows: Black–Bk., Blue–Be., Brindle–Bd., Fawn–F., Red–R., White–W., Ticked–T., or [illegible] combination of these that may be necessary, the predominating color being given first.

This application must be carefully and completely filled out on both sides.

(reverse)

USE HALF-TOE FORM TO INDICATE THE COLOR OF EACH TOENAIL: L—Light, D—Dark, N—None



Sex: B
Color: BK.

Sex: B
Color: W + Bk

Sex: D
Color: DK Bl

Sex: D
Color: Bl & W

Sex: B
Color: R Bl

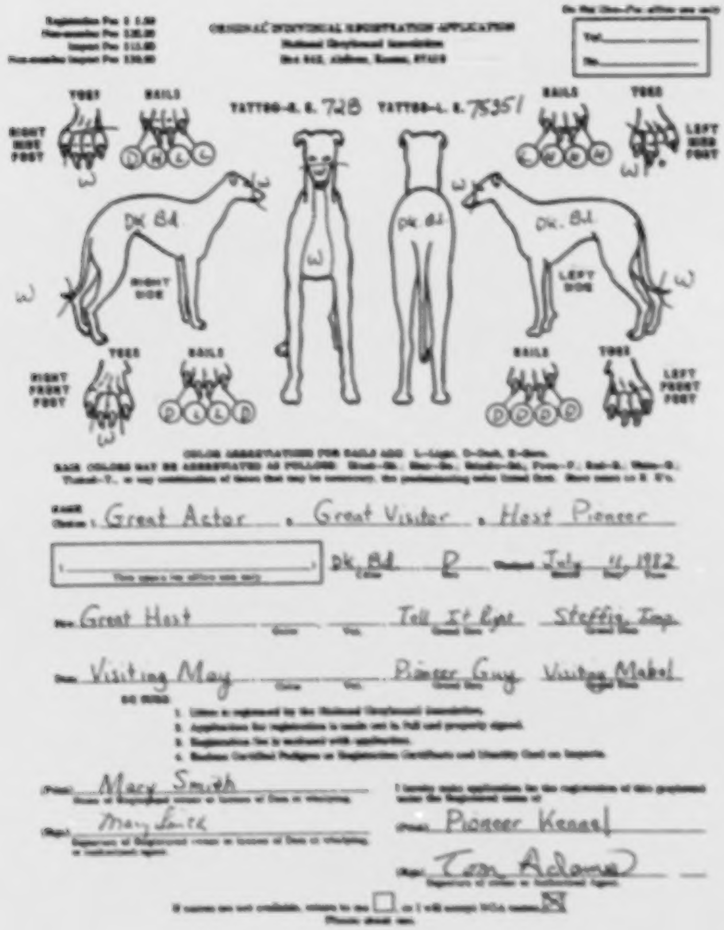
Sex:
Color:

INDIVIDUAL REGISTRATION. These applications, also called "onion skins," must be signed by the record owner or registered lessee of the dam. The application shall contain a description of the greyhound, including color, markings, distinguishable features and tattoos, with the whelping date, sex, pedigree, name of present owner, and the name of the owner or lessee of dam at time of whelping.

A pup is named when it is individually registered. The owner's first three name choices for the pup should appear in the designated section on the application. Naming is an important undertaking, and care should be used in selecting a name that will reflect good taste. No names are allowed that have a tendency to mislead the public as to the pup's breeding or by a name similar in sound to a name previously registered, unless the greyhound has been deceased for at least 10 years and was not used for breeding purposes. Designations of "The," "Jr.," "Sr.," "I,", "II," etc. are not permitted, nor names that contain more than 16 letters, including spaces. A member or non-member, upon the payment of the appropriate fee, may make application to register a designated prefix for the purpose of naming greyhounds, and when the name has been approved, no one else is permitted to register or use the name reserved as a prefix. The reservation and registration of generic and common names as a designated prefix shall not be permitted. All names must be approved by the Keeper of the Stud Book. Fee for Individual Registration is $5 for members, $20 for non-members. Upon proper completion of the application, a Certificate of Registration for the individual greyhound is issued.

Most frequent errors:

- Recording tattoos incorrectly from the dog onto the bertillon.
- Failure to provide owner's name and signature in lower right hand corner.
- Non-members submitting forms without having previously submitted a non-member application and signature card.
- Registering into two persons' names using the word "and" (which requires a partnership), when no registered partnership exists. Problem can be eliminated by submitting partnership or by using the word "or" rather than "and."



W
Dk. Bd.
W
W
W
W
D
L
D
P
W

728 75351

Great Actor Great Visitor Host Pioneer

Dk. Bd. D July 11, 1982

Great Host Tell It Rye Steffie Imp

Visiting May Pioneer Guy Visiting Mabel

Mary Smith

Mary Smith

Pioneer Kennel

Tom Adams

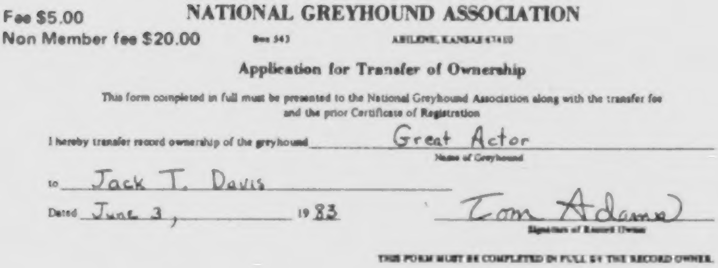
☐ ☒

TRANSFER. An application for a transfer of record ownership must be signed by the record owner of the greyhound or an authorized agent and submitted along with the certificate of registration. A new certificate is subsequently issued in the name of the new record owner. Fee is $5 for members, $20 for non-members.

Most frequent errors:

*Transferring a dog into two persons' names when a registered partnership does not exist. Problem can be eliminated by submitting a partnership or by using the word "or" rather than "and" between the persons' names.

*Transferring a dog into two persons' names and submitting member fee when only one of the two is a member. Nonmember fee will need to be submitted (along with a nonmember application and signature card, if not already received) before the transfer can be completed.



Fee $5.00
Non Member fee $20.00

NATIONAL GREYHOUND ASSOCIATION

Box 543 ABILENE, KANSAS 67410

Application for Transfer of Ownership

This form completed in full must be presented to the National Greyhound Association along with the transfer fee and the prior Certificate of Registration

I hereby transfer record ownership of the greyhound Great Actor
Name of Greyhound

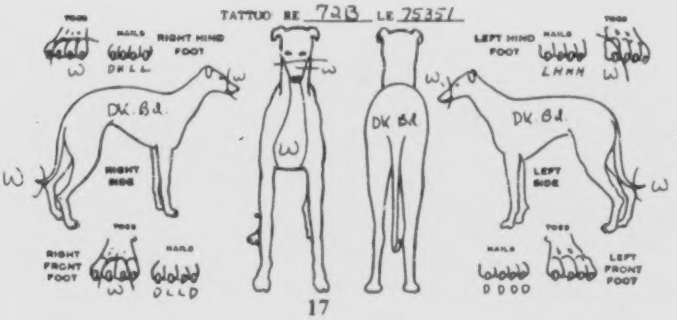
to Jack T. Davis

Dated June 3, 1983 Tom Adams
Signature of Record Owner

THIS FORM MUST BE COMPLETED IN FULL BY THE RECORD OWNER.

(reverse)

TATTOO RE 72B LE 75351



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LEASE CERTIFICATE. This registration is designed to help eliminate problems and disputes over questionable ownership, and can be issued both for racing and breeding purposes. A Lease Certificate is issued upon receipt of a completed Lease Application form, registration fee, and the outstanding Individual Registration certificate. The Lease Certificate will then be forwarded to the lessee or kennel owner, and, if applicable, presented with the greyhound at the race track. The original Individual Registration will be sent to and held by the true owner of the greyhound, unless otherwise requested by the owner. Lease Certificate fee is $5 for members, $20 for non-members.

Most frequent error:

*Making application when a previous lease (usually a racing-life lease) has been issued. The original lease needs to be canceled before the second lease can be issued.

DUPLICATE CERTIFICATE. Should you lose or destroy an Individual Registration certificate, an application for a Duplicate Certificate must be completed, stating what had become of the original registration, and signed by the record owner. Fee for a Duplicate Certificate is $5 for members, $20 for non-members.

Most frequent error:

*Failure to give an explanation regarding the lost or destroyed paper. This information is mandatory if a Duplicate Certificate is to be issued.

IMPORT. An imported greyhound may be registered with the NGA, provided it has properly been registered previously in a foreign greyhound registry recognized by the NGA–namely, the Irish Coursing Club, the National Coursing Club of England or the Australian and New Zealand Greyhound Association. The owner should submit a regular Individual Application (onion skin), along with a photostatic copy of the original certified pedigree or registration paper and other identity documents furnished by the foreign registry. Import registration fee is $15 for members, $30 for non-members.

KENNEL REGISTRATION. Any individual, partnership, association or corporation may register an original kennel name or combination of letters or initials or both. Fee is $5 for members, $20 for non-members. An annual Kennel Registration certificate will be issued in the name of the kennel for $5 (per year) for members, $20 for non-members.

BUSINESS ENTITIES. A partnership, association or corporation may be registered for $5 a year for members, $20 a year for non-members.

IMMEDIATE "RUSH" SERVICE. Owners in a hurry for papers may request the Immediate "Rush" Service, which ensures the certificate will receive priority attention and be processed and sent out no later than the following day–and oftentimes the same day it's received. The Immediate Service fee is $5 per item, and applies to all NGA registrations.

FEES & PENALTIES SCHEDULE

Membership Initiation	$100
Annual Membership Dues	20

	Member	Non-member
Notification of Breeding	$ 5	$20
Litter Registration	5	20
Individual Registration	5	20
Transfer	5	20
Lease Certificate	5	20
Duplicate Certificate	5	20
Import	15	30
Kennel Registration	5 per year	20 per year
Business Entity	5 per year	20 per year
Immediate "Rush" Service	5	5
Designated Prefix for Naming	5 per year	20 per year

DELINQUENT SCHEDULE

Breedings

1 to 30 days	$ 20
31 to 120 days	$100
121 days to 1 year	$200

Litters

1 to 30 days	$ 20
31 to 60 days	$100
61 days to 1 year	$200

Over one year, litter registration will not be accepted.

Tattoo Penalties

At time of litter registration	$ 5 per pup
Errors not reported when litter registered	$25 per pup

(when individually registered)

NGA MEETS

The NGA stages a Fall Meet in October each year, and other meets (usually in April) at the discretion of the Executive Committee.

An official-size Alldritt Lure race track located on NGA grounds is the site of exciting track racing held at the meets. Numerous stakes are offered at the meets, with emphasis on pups nearing track-age.

Any pup competing at any NGA meet must be individually registered 30 days prior to the meet, or is subject to a $25 late registration penalty. Pups having had an official start at a parimutuel race track are not permitted to compete at NGA meets.

NGA meets offer much more than just racing. Since 1978, the NGA has also sponsored greyhound auctions at the meets, featuring the sale of young racing stock and breeding stock. In addition, banquets that honor veterans of the sport, a barbeque, seminars, NGA business meetings, Greyhound Hall Of Fame induction ceremonies and other events are scheduled in conjunction with the meets, making them the only full-fledged national greyhound "convention" in the sport.

Detailed schedules of the activities during NGA meets, including stakes offered, age requirements, entry fee, purse monies, and auction schedules, are published in the Review several months in advance.

PUBLICATIONS

The National Greyhound Association publishes yearly the Greyhound Stud Book, which contains a record of the Breedings, Litters and Individual Registrations of greyhounds for the year. Included in the Stud Book are membership and non-membership rosters and addresses; minutes of NGA Business and Executive Committee meetings; Constitution and By-laws, and other items of interest. The Stud Book is priced at $20.

"The Greyhound Review," the Association's monthly publication, informs members and subscribers of the latest events in the industry, with emphasis on track news, bloodline information, veterinary and research articles and regional news. Latest registry information is regularly carried, making it invaluable to anyone using the registry. Litter Registrations and Breedings accepted during the past month are also listed.

"The Greyhound Review" is the most extensive vehicle in America for advertising greyhounds at stud or brood matrons and pups for sale. The Review is published monthly and sells for $2.50 an issue or $20 a year subscription. Advertising rates appear on p. 1 of each issue, and ad rate cards are furnished upon request.

OTHER SERVICES

GREYHOUND SUPPLIES. The NGA provides a greyhound supply service to owners, offering such items as racing and wire muzzles, leads, collars, blankets, foot conditioner, Jack-A-Lures, tattoo sets and numerous veterinary supplies. A supplies order blank, along with current prices, is listed on the last page of each issue of the Review.

PEDIGREE SERVICE. Five-generation certified pedigrees are available through the NGA for $5 each.

CREDIT POLICY

All services and supplies provided by the NGA are handled on a cash basis only. Registrations received without the adequate fee are held until payment is received. Supply orders received without payment are sent C.O.D. There are no exceptions to this policy.

Many members find it convenient to deposit some money in their accounts in advance, thus having it readily available when supplies or NGA services are needed.

All advertising accounts for members must be paid within 30 days of billing date. Non-member advertising accounts must be pre-paid.

Address all registration and Review materials and any correspondence to:

The NATIONAL GREYHOUND ASSOCIATION
P.O. Box 543
Abilene, Ks. 67410

Phone: 913-263-4660

(NOTE: Prices and fees listed in this booklet were as of 1985 and are subject to change. Consult recent issues of "The Greyhound Review" or contact the NGA for current prices.)

EXHIBIT B

NASRC BULLETIN II VOLUME 51, NUMBER 19
May 2, 1985

RACING AGAIN IS NO. 1
IN ATTENDANCE SURVEY

A rather spectacular surge in attendance made baseball the leading spectator sport in the U.S. in 1983, but baseball slipped in 1984 and horse racing, even though it, too, lost some ground, came back to reclaim its usual No. 1 ranking. Greyhound racing clung to sixth place behind baseball, football, automobile racing, and basketball.

The source for this intelligence is Daily Racing Form's 38th annual survey of sports attendance:

	1984	1983		DIFFERENCE 1984 & 1983
HORSE RACING				
Thoroughbreds	50,284,324	50,169,430	PLUS	114,894
*Harness	24,236,074	25,615,000	minus	1,378,926
Totals	74,520,398	75,784,430	minus	1,264,032
BASEBALL				
Major Leagues, 26 Teams	44,742,863	45,540,338	minus	797,475
Minor Leagues, 17 Circuits	17,580,299	18,560,690	minus	980,391
World Series and Play-Offs	1,218,079	1,053,818	PLUS	164,261
Colleges	9,921,530	12,896,497	minus	2,974,967
Totals	73,462,771	78,051,343	minus	4,588,572
*AUTOMOBILE RACING	57,606,300	55,122,329	PLUS	2,483,971
FOOTBALL				
Collegiate, 654 Schools	36,652,179	36,301,877	PLUS	350,302
National Football League, 28 Teams	13,398,112	13,277,222	PLUS	120,890
U.S. Football League, 18 Teams	4,394,382	2,680,961	PLUS	1,713,421
Post-Season Games, Colleges & Pros	2,238,505	2,157,645	PLUS	80,860
Totals	56,683,178	54,417,705	PLUS	2,265,473
BASKETBALL ('83- '84 Season)				
1260 Senior Colleges	31,684,078	31,471,135	PLUS	212,943
N.B.A., 23 Teams, Including Play-Offs	11,110,483	10,244,084	PLUS	866,399
Totals	42,794,561	41,715,219	PLUS	1,079,342
GREYHOUND RACING	22,283,902	22,090,018	PLUS	193,884
HOCKEY ('83- '84 Season)				
National Hockey League, 21 Teams	12,466,786	12,028,832	PLUS	437,954
*Minors & Colleges	8,747,608	8,256,882	PLUS	490,726
Totals	21,214,394	20,285,714	PLUS	928,680
*WRESTLING	12,910,000	9,500,000	PLUS	3,410,000
*SOCCER	7,544,304	8,400,348	minus	856,044
*TENNIS (Open)	5,087,220	4,200,000	PLUS	887,220
*BOXING	3,860,000	7,144,747	minus	3,284,747

*Estimated

EXHIBIT C

Greyhound racing continues upward swing at the pari-mutuel windows

The amount of money which passed through the pari-mutuel windows at greyhound racing tracks showed another increase in 1984, according to the 1984 summary of state pari-mutuel tax structures.

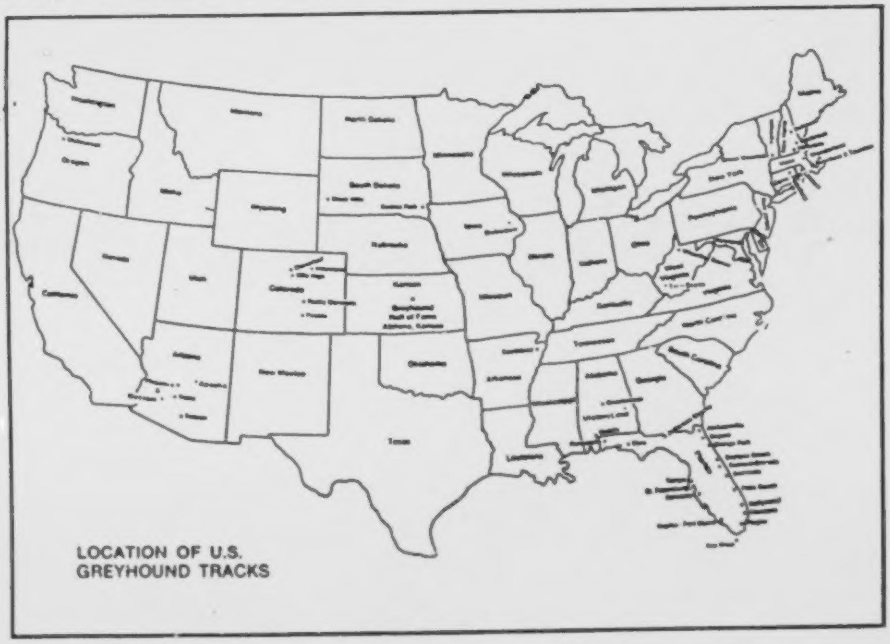
The annual report compiled by the American Greyhound Track Operators Association with the help of the greyhound state racing commissions shows an increase in both attendance and the amount of the pari-mutuel handle, thus an increase in the amount of money states and counties received.

The 1984 figures show total state and county revenues of $176,404,705.85. Florida, by far, received the most state aid receiving $75,440,117.98.

Since 1980, greyhound racing has shown an increase in both the pari-mutuel handle and the amount of state aid (see chart). Attendance figures were up slightly in 1984.

Comparative Data
Percentage of increase or decrease

Year	Attendance	Revenue	P/M Handle
1980	-1.5%	5.1%	5.6%
1981	3.2%	5.8%	5.7%
1982	-.04%	1.5%	.84%
1983	2.8%	5.8%	5.3%
1984	.9%	5.3%	5.4%



1984
SUMMARY OF STATE
PARI-MUTUEL TAX STRUCTURES

ALABAMA (3 TRACKS)

GREENE COUNTY

TOTAL TAKE OUT: 18%
COUNTY RECEIVES: 4%
TRACK RECEIVES: 14%
BREAKAGE: To 10¢ (All breakage retained by track)
ADMISSION TAX: 15% of the established admission price or 10¢ per head, whichever is greater.
OUTS: Valid for one year, then retained by track.
UNDERPAYMENTS: Paid to the commission as an addition to the charity fund.
LEGAL AGE: Must be 18 years old to attend and/or wager.
FINES: Paid to Greene County Racing Commission.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO COUNTY	P/M HANDLE
GREENETRACK	300	164	464	629,151	$ 3,782,548.84	$ 92,379,091

MACON COUNTY

TOTAL TAKE OUT: 18%
COUNTY RECEIVES: 4%
TRACK RECEIVES: 14%
BREAKAGE: To 10¢ (All breakage retained by track)
ADMISSION TAX: 10¢ per head
OUTS: Valid for one year, then retained by track.
UNDERPAYMENTS: Paid to the commission as an addition to charity fund.
LEGAL AGE: Must be 19 years old to attend and/or wager.
FINES: Paid to Macon County Racing Commission.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO COUNTY	P/M HANDLE
VICTORYLAND	88	46	134	357,521	$ 1,661,218.16	$ 40,822,227

MOBILE COUNTY

TOTAL TAKE OUT: 18%
COUNTY RECEIVES: 8%
TRACK RECEIVES: 10%
BREAKAGE: To 10¢ (Divided 50% to county and 50% to track)
ADMISSION TAX: 15% of the established admission price or 10¢ per head, whichever is greater.
OUTS: Valid one year, then they escheat 50% to county and 50% to track.
UNDERPAYMENTS: Must be paid into a track administered "Board of Relief" fund.
LEGAL AGE: Must be 18 years old to attend and/or wager.
FINES: Paid to "Board of Relief" for the greyhound owners' association.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO COUNTY	P/M HANDLE
MOBILE	288	106	394	749,715	$ 6,894,633.80	$ 83,380,697
ALABAMA TOTALS	676	316	992	1,736,387	$ 12,338,400.80	$ 216,582,015

ARIZONA (6 TRACKS)

TOTAL TAKE OUT: 18% on W/P/S pools; 21% on pools involving two dogs; 25% on pools involving three or more dogs.

STATE RECEIVES: 7.5% in large counties; 5.5% of the first $65,000 and 7.5% of amounts exceeding $65,000 in small counties. May be reduced by 1% for approved capital improvement projects.

TRACK RECEIVES: 10.5% in large counties; 12.5% of the first $65,000 and 10.5% of amounts exceeding $65,000 in small counties. At least 3.25% of the handle must be allocated to purses. One-half of the take-out exceeding 18% must be used to supplement purses.

BREAKAGE: To 10¢ (All breakage retained by track)

ADMISSION TAX: None

OUTS: All outs monies retained by track. All tickets valid for one year.

UNDERPAYMENTS: Total underpayments less total overpayments for the meet revert to the state at the end of the meet.

LEGAL AGE: No one under 13 admitted; 13-18 must be accompanied by parent or guardian. To wager, individual must be 18 years old.

FINES: Paid to General Fund, State of Arizona.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
APACHE	--	67	67	23,655	$ 120,770.00	$ 2,008,389
BLACK CANYON*	48	10	58	56,735	914,156.00	14,307,777
PHOENIX	106	--	106	334,943	2,059,996.00	32,503,933
TUCSON	245	90	335	382,587	2,070,890.00	38,915,679
WESTERN*	150	30	180	406,954	2,997,767.00	47,512,236
YUMA	94	39	133	118,676	382,619.00	8,328,746
	643	236	879	1,323,550	$ 8,546,198.00	$ 143,576,960

*Meet conducted at Phoenix.

ARKANSAS (1 TRACK)

TOTAL TAKE OUT: 18%

STATE RECEIVES: 7%

TRACK RECEIVES: 11%

BREAKAGE: To 10¢ (1/3 to state and 2/3 to city in which track is located)

ADMISSION TAX: 10% of the established admission price or 10¢ per head, whichever is greater.

OUTS: Valid for 180 days following the close of the meet, then they escheat 1/3 to the state, 1/3 to the city in which track is located and 1/3 to county.

UNDERPAYMENTS: No provision under the current tax structure.

LEGAL AGE: Must be 18 years old to attend and/or wager.

FINES: Paid to the Arkansas Racing Commission.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
SOUTHLAND	140	35	175	1,183,212	$ 9,861,292.00	$ 136,025,430

COLORADO (5 TRACKS)

TOTAL TAKE OUT: 15%

STATE RECEIVES: 4%

TRACK RECEIVES: 11%

BREAKAGE: To 10¢ (All breakage retained by track)

ADMISSION TAX: None

OUTS: Valid for one year from the last day of the meet, then escheats to track.

UNDERPAYMENTS: Excess over and above overpayments reverts to the state 30 days after the close of the meet.

LEGAL AGE: Must be 18 years old to wager. Admittance age is at the discretion of the track.

FINES: Paid into General Fund, State of Colorado.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE*	REVENUE TO STATE	P/M HANDLE*
CLOVERLEAF	75	38	113	393,102	$ 1,963,725.20	$ 49,088,095
INTERSTATE	71	37	108	263,233	1,479,524.16	36,988,104
MILE HIGH	76	33	109	503,644	2,156,985.04	53,924,626
PUEBLO	74	15	89	107,431	483,190.81	9,304,695
ROCKY MOUNTAIN	68	39	107	254,259	1,233,094.53	30,800,327
	364	162	526	1,521,669	$ 7,316,519.74	$ 180,105,847

*Includes satellite totals

CONNECTICUT (1 TRACK)

TOTAL TAKE OUT: 19%

STATE RECEIVES: 8½%

TRACK RECEIVES: 10½% (Municipality where track is located receives ½ of 1% of the handle from the state's share.)

BREAKAGE: To 10¢ (50% to the state and 50% to the track)

ADMISSION TAX: 10% of established price to Town of Plainfield, plus 10% to state on all charges over $1.00.

OUTS: All tickets are valid for one year following the close of the meeting, then all monies escheat to the state.

UNDERPAYMENTS: Revert to the state.

LEGAL AGE: Anyone under 18 years of age cannot attend the facility while meet is in progress.

FINES: Paid to the State of Connecticut.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
PLAINFIELD	219	231	450	933,419	$ 10,144,381.61	$ 119,345,666

FLORIDA (18 TRACKS)

TOTAL TAKE OUT:

17.6% on W/P/S pools.

19% maximum of daily double, quiniella double, quiniella, perfecta and big Q pools.

This amount is made up of 18% plus an additional 1% at the track's option. 0.5% of this additional take out shall be applied to the reduction of capital improvement debt or to capital improvements. The remaining 0.5% is paid to the state as a surtax.

20% maximum on pic-6.

This amount is made up of 18% plus up to an additional 2% take out at the track's option. 1.5% of this additional take out shall be applied to reduction of capital improvement debt or to capital improvements. The remaining 0.5% is paid to the state as a surtax. Tracks which take out only 1% additional, are not subject to the surtax.

21% maximum on trifecta pools.

This amount is made up of 18% plus an additional 1% to establish a maximum 3%

purse plus up to an additional 2% take out at the track's option. 1.5% of the additional take out shall be applied to the reduction of capital improvement deb or to capital improvements. The other 0.5% is paid to the state as a surtax. Tracks which take out only 1% additional, are not subject to the surtax.

STATE RECEIVES: 7.6% on the handle in excess of $25,000 per performance plus a daily license fee of $80 per race from tracks whose previous season's daily handle exceeded $100,000 and a $50 license fee per race for those tracks which did not. Tracks electing the capital improvement options referred to above are subject to a 0.5% surtax on the additional amounts withheld.

TRACK RECEIVES: All of the take out on first $25,000 of handle on each performance plus the balance of the take out after the state tax is deducted.

BREAKAGE: To 10¢ except in the event of a minus pool, then 5¢. (All breakage to state.)

ADMISSION TAX: 15% of the established admission price or 10¢ per head, whichever is greater.

OUTS: Valid for one year from the date of purchase, then all monies escheat to state.

UNDERPAYMENTS: Paid to General Revenue, State of Florida.

LEGAL AGE: Must be 18 years old to attend and/or wager.

FINES: Non-medication fines to tracks administered Board of Relief Fund.
Medication fines to State Racing Research Trust Fund.

TRACKS	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDL
BAYARD	108	35	143	294,985	$ 2,677,195.66	$ 35,481,29
BISCAYNE	103	52	155	778,025	8,190,691.23	99,191,98
DAYTONA	108	51	159	405,869	2,681,976.75	34,148,40
FLAGLER	105	54	159	700,788	7,110,157.87	88,888,67
HOLLYWOOD	104	52	156	997,788	8,496,857.99	100,088,18
JACKSONVILLE	84	28	112	350,001	2,670,732.75	35,009,76
JEFFERSON	104	21	125	184,311	1,414,090.46	18,299,66
KEY WEST	96	18	114	59,991	235,470.73	4,759,61
NAPLES	109	51	160	505,833	3,369,541.46	43,004,02
ORANGE PARK	121	41	162	455,315	3,853,353.52	50,518,23
PALM BEACH	106	56	162	645,673	4,785,094.15	61,635,96
PENSACOLA	110	47	157	247,230	1,748,660.61	22,970,23
ST. PETERSBURG	101	52	153	1,014,533	2,124,346.10	103,032,75
SANFORD	104	54	158	521,503	4,253,971.16	55,011,36
SARASOTA	101	51	152	456,018	3,951,279.37	49,678,64
SEMINOLE	105	52	157	319,667	2,683,164.99	34,244,75
TAMPA	104	52	156	824,126	7,478,149.95	90,577,15
WASHINGTON	105	43	148	220,780	1,715,383.23	22,280,59
	1,878	810	2,688	8,983,236	$ 75,440,117.98	$ 956,821,30

IOWA (1 TRACK)

TOTAL TAKE OUT: 16% W/P/S; 18% on all other forms

STATE RECEIVES: 5%

COUNTY RECEIVES: 1/2%

CITY RECEIVES: 1/2%

TRACK RECEIVES: 10% on W/P/S; 12% on all other forms

BREAKAGE: 10% (100% to breeders program)

ADMISSION TAX: 50¢

OUTS: 100% to state

LEGAL AGE: Must be 18 years old to wager.

FINES: To commission

PERFORMANCE LICENSE FEE: $200.00 per performance

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
DUBUQUE	Opening June 1985					

MASSACHUSETTS (3 TRACKS)

TOTAL TAKE OUT: 19% distributed between the state and the track:

PERFORMANCE HANDLE	STATE RECEIVES	TRACK RECEIVES	PURSES
$ -0- to $200,000	6%	9½%	3½%
200,001 up	11%	4½%	3½%

BREAKAGE: To 10¢ (50% to the state and 50% to the track)

ADMISSION TAX: None

OUTS: Valid up to December 31st of the year following the date on the ticket, then escheats to the state.

UNDERPAYMENTS: Revert to the state

LEGAL AGE: All individuals must be 18 years old to wager. Admittance age is at discretion of track provided individual is accompanied by an adult.

FINES: Paid to Commonwealth of Massachusetts.

TRACKS	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
RAYNHAM	139	88	227	639,982	$ 5,201,366.28	$ 65,023,184
REVERE	310	—	310	1,160,468	13,242,180.53	142,162,253
TAUNTON	115	118	233	669,159	5,549,020.39	68,646,213
	564	206	770	2,469,609	$ 23,992,567.20	$ 275,831,650

NEW HAMPSHIRE (3 TRACKS)

TOTAL TAKE OUT: 19% distributed between the state and track on the following sliding scale, with an additional 6% take out on exotic wagering (track 2%, state 4%).

DAILY HANDLE	STATE RECEIVES	TRACK RECEIVES
$ -0- to $100,000	6%	13%
100,001 to 200,000	7%	12%
200,001 to 300,000	9%	10%
300,001 up	10%	9%

BREAKAGE: To 10¢ (State receives 50% and the track receives 50%)

ADMISSION TAX: None

OUTS: All outs are turned over to the commission on or before December 31st of each year. Payment on the tickets will be made by the commission for one year, then the money reverts to the state's general fund.

UNDERPAYMENTS: Reverts to the state 30 days after the close of the meet.

LEGAL AGE: Anyone under 18 years old may attend accompanied by parent or guardian. To wager, individuals must be 18 years old.

FINES: Paid to General Fund, State of New Hampshire.

TRACKS	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
BELMONT	103	34	137	86,273	$ 218,166.96	$ 6,067,016
HINSDALE	191	92	283	220,595	1,610,540.87	22,476,324
SEABROOK	143	235	378	564,816	5,341,464.93	57,076,058
	437	361	798	871,684	$ 7,170,172.76	$ 85,619,398

OREGON (1 TRACK)

TOTAL TAKE OUT: 16% except on any wager requiring the selection of three or more separate wagering interests, then 18% (Non-profit 22%).

STATE RECEIVES: 6.3% (Non-profit 2.5%) except on any wager requiring the selection of three or more separate wagering interests, then 10.3% (Non-profit 7.5%) plus a license fee of $100 per race day (Non-profit $25 total for race meet).

TRACK RECEIVES: 9.7% (Non-profit 13.4%) except on any wager requiring the selection of three or more separate wagering interests, then 10.8125% (Non-profit 14.4%). An additional 0.1% is retained by Non-profit for the development and operation of a training track and related facilities.

BREAKAGE: To ten cents (10¢) (1/3 retained by track; 1/3 to augment purses; 1/3 for the benefit of the breeding, ownership, training and racing of greyhounds) except for when pool computes to less than 10¢ for each dollar wagered, then to five (5) cents.

ADMISSION TAX: None

OUTS: Valid for 90 days following the end of the continuous race meet, then all monies escheat to the state within 120 days after end of meet.

UNDERPAYMENTS: Revert to the state.

LEGAL AGE: All persons 18 years of age or older may wager. Persons 12 years through 17 years, if accompanied by parent, spouse or guardian, are permitted to races after 6:00 PM. For matinees, accompanied children of all ages are permitted.

FINES: Paid to Oregon Racing Commission.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
MULTNOMAH	76	17	93	495,118	$ 2,895,488.12	$ 43,650,230
NON-PROFIT FAIRS:						
PAC. INT.	10	--	10	50,818	215,619.30	4,632,788
MULT. CO.	10	--	10	48,386	212,605.47	4,571,131
	96	17	113	594,322	$ 3,323,712.89	$ 52,854,149

RHODE ISLAND (1 TRACK)

TOTAL TAKE OUT: 18% on W/P/S pools.
19% on all other forms of wagering.

STATE RECEIVES: 5½%

TOWN OF LINCOLN RECEIVES: 1/2%

TRACK RECEIVES: 12% + 1% additional on all other forms of wagering for capital improvement fund.

BREAKAGE: 50% to the state and 50% to the track.

OUTS: Monies revert to the state after one year from date of end of meet.

LEGAL AGE: Must be 18 years of age to wager.

FINES: Paid to Rhode Island Racing & Athletic Commission, General Treasury State of Rhode Island.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE*	P/M HANDLE
LINCOLN	255	197	452	1,163,790	$ 7,768,556.22	$ 126,488,553

* Of this total, $632,442.76 paid to Town of Lincoln.

SOUTH DAKOTA (2 TRACKS)

TOTAL TAKE OUT: 16½% W/P/S; 17½% on all other forms of wagering up to $8 million. If handles goes over $8 million, the total take out on all pools is increased by 1%. The take out is distributed as follows:

	(----------STATE----------		----------)		
	GENERAL REVENUE FUND	COMMISSION REVOLVING FUND	HORSE BREEDERS FUND	TRACK RECEIVES	SCHOOL DISTRICT RECEIVES
WIN, PLACE, SHOW WAGERING					
$ -0- to $1 million	4%			12.25%	
1 million to 8 million	6%			10.25%	
8 million to 16.75 million	7%			9%	1.25%
16.75 million and over	7%	.625%	.625%	9%	
On daily handles under $25,000					
$ -0- to 8 million	3%			13.25%	
8 million to 16.75 million	3%			13%	1.25%
16.75 million and over	3%	.625%	.625%	13%	
MULTIPLE WAGERS					
$ -0- to $1 million	4%	.25%	.25%	12.75%	
1 million to $8 million	6%	.25%	.25%	10.75%	
8 million to 16.75 million	7%	.25%	.25%	9.5%	1.25%
16.75 million and over	7%	.875%	.875%	9.5%	
On daily handles under $25,000					
$ -0- to $8 million	3%	.25%	.25%	13.75%	
8 million to 16.75 million	3%	.25%	.25%	13.5%	1.25%
16.75 million and over	3%	.875%	.875%	13.5%	

BREAKAGE: To 10¢ (All breakage to track on handles up to $8 million. All breakage on the handle over $8 million goes to the state.)

ADMISSION TAX: None

OUTS: All tickets are valid for 60 days following the close of the meet. All monies are retained by the track.

UNDERPAYMENTS: Placed in a comparative pool the following race.

LEGAL AGE: Must be 18 years old to wager. No age limit to attend Black Hills track.
Must be 18 years old to attend Sodrac track.

FINES: Paid to Racing Commission.

TRACKS	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE/SCHOOLS*	P/M HANDLE
BLACK HILLS	128	3	131	120,956	$ 384,616.02	$ 6,683,638
SODRAC	131	47	178	277,798	1,909,819.00*	25,447,058
	259	50	309	398,754	$2,294,435.02	$ 32,130,696

*Includes $109,375.00 paid to school district.

VERMONT (1 TRACK)

TOTAL TAKE OUT: 19% W/P/S; 25% on all other forms of wagering on all days.

STATE RECEIVES: 5% on total wagered each race day conducted Monday through Saturday;
6% on total wagered on Sunday.
An additional percentage on all pools other than W/P/S as determined by the number of racing programs conducted:
less than 150 racing programs----------5%
150 through 200 racing programs---------1½%
201 through 220 racing programs---------1¼%
221 or more racing programs-------------1%.
In addition, local township receives a $200 fee for each racing day.

BREAKAGE: To 10¢ (100% to track)

ADMISSION TAX: None

OUTS: All outs are turned over to the commission on or before the first Monday in December of each year. Payment is made by the state for two years after which money reverts to the state's racing fund.

LEGAL AGE: 18 years old to wager.

FINES: Paid to Vermont Racing Commission for state revenue.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO STATE	P/M HANDLE
GREEN MOUNTAIN	125	38	163	166,943	$ 833,883.26	$ 12,623,696

WEST VIRGINIA (2 TRACKS)

TOTAL TAKE OUT: 16.30%

DAILY HANDLE	STATE RECEIVES*	TRACK RECEIVES	CITY/COUNTY RECEIVES**
$ -0- to $ 50,000	4%	12.20%	.10%
50,001 to 100,000	5%	11.20%	.10%
100,001 to 200,000	6%	10.20%	.10%
200,001 to 350,000	7%	9.20%	.10%
350,001 up	8%	8.20%	.10%

* State also receives a $150 fee per operating day.
**If track is located within city limits, then city receives 1/10th of 1% of handle.
If track is not in city limits, then county receives 1/10th of 1% of handle.

BREAKAGE: To 10¢ (All breakage retained by track)

ADMISSION TAX: None

OUTS: Valid for 180 days following close of meet, then escheats to the state.

UNDERPAYMENTS: Responsibility of association to place in comparative pool in the following race.

LEGAL AGE: No age limit to attend; must be 18 years old to wager.

FINES: Paid to the Special Account, State of West Virginia.

TRACK	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE TO GOVERMENTS	P/M HANDLE
TRI-STATE	Anticipated Opening May 1985					
WHEELING	306	104	410	937,327	$ 7,366,468.37	$ 113,380,372

1984 RECAPITULATION

STATE	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE STATE/COUNTY	P/M HANDLE
ALABAMA	676	316	992	1,736,307	$ 12,338,400.00	$ 216,382,015
ARIZONA	643	236	879	1,323,550	8,546,198.00	143,576,980
ARKANSAS	140	35	175	1,183,212	9,861,292.00	136,029,430
COLORADO	364	162	526	1,521,669	7,316,519.74	180,105,847
CONNECTICUT	219	231	450	933,419	10,144,381.61	119,345,666
FLORIDA	1,870	810	2,680	8,983,236	75,440,117.98	956,821,309
MASSACHUSETTS	564	206	770	2,469,609	23,992,587.20	275,831,560
NEW HAMPSHIRE	437	361	798	871,684	7,178,172.76	85,619,398
OREGON	96	17	113	594,322	3,323,712.89	52,854,149
RHODE ISLAND	255	197	452	1,163,790	7,768,956.22	126,488,553
SOUTH DAKOTA	250	50	300	398,754	2,294,435.02	32,130,696
VERMONT	125	38	163	166,943	833,883.26	12,623,696
WEST VIRGINIA	306	104	410	937,327	7,366,468.37	113,380,372
NAT'L. TOTALS	5,962	2,763	8,725	22,283,902	$176,404,705.05	$2,451,385,751

COMPARATIVE DATA

	DAYS	MATS.	TOTAL PERF.	ATTENDANCE	REVENUE STATE/COUNTY	P/M HANDLE
1983	5,964	2,635	8,599	22,090,018	$167,575,336.14	$2,325,846,934
1984	5,962	2,763	8,725	22,283,902	$176,404,705.85	$2,451,385,751
AMT. INC/(DEC)	(2)	128	126	193,884	$ 8,829,369.71	$ 125,538,817
PERCENTAGE INC/(DEC)	(.03%)	4.9%	1.5%	.9%	5.3%	5.4%

	1983	1984
AVERAGE ATTENDANCE PER PERFORMANCE	2,568	2,554
AVERAGE REVENUE TO STATE/COUNTY PER PERFORMANCE	$ 19,488	$ 20,218
AVERAGE PARI-MUTUEL HANDLE PER PERFORMANCE	$ 270,478	$ 280,961

85/1000

Introducing At Stud

GRANDPA FRANK

Red Male **74 lbs.** **7-79**

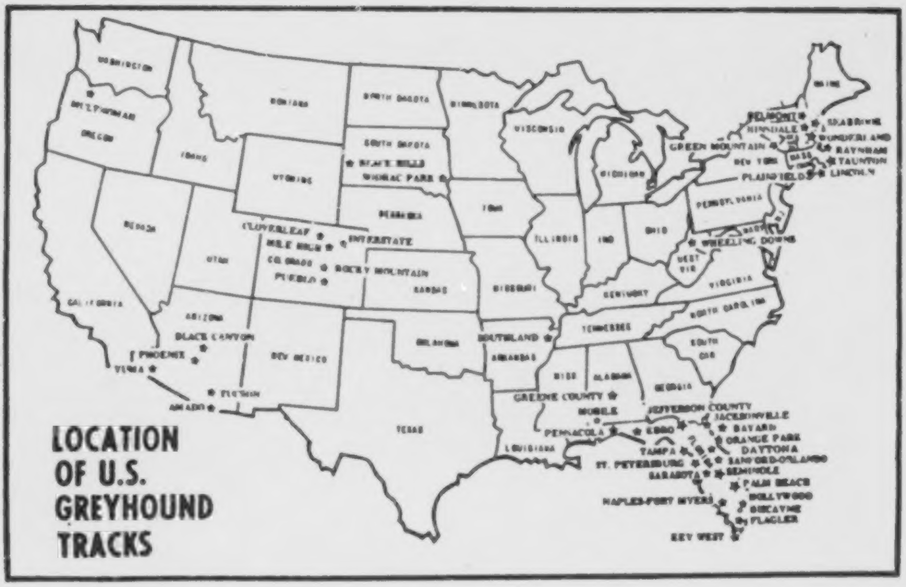
Sire: **Rustler's Grumpy**	**Royal Topper** **Irrs Dawn**	**Dam:** **Gill's Glee**	**Succeeded** **Donna Did**

Grandpa Frank is the only stud dog in this book that goes back to Royal Topper. He was the track record holder at Vegas Downs. He beat the best that came out of Las Vegas.

Fee: $250

Mike Borchers
702-451-6661

Return breeding of course. Ship bitches to McCarron Airport, Las Vegas, Nev. No pick-up fee, good service.



LOCATION OF U.S. GREYHOUND TRACKS

EXHIBIT D

GREYHOUNDS IN KANSAS
(Bob Dole's home state)

Some facts about the greyhound industry in the state of Kansas....

*Kansas is the third largest greyhound producing state in the country, with more than 220 owners maintaining about 11,000 greyhounds.

*Approximately $9 million is spent within the state of Kansas each year by greyhound owners and breeders for maintenance of greyhounds (for such items as food, transportation, labor, medicine, equipment, etc.) This does not include original investment by owners for such items as land, housing, kenneling, fencing, land maintenance equipment, etc.)

*An NGA survey revealed that the average greyhound farm represents a $95,000 investment (1978 figure). With more than 150 full-fledged farms in operation in the state, some $14.25 million (1978 dollars) is invested by the greyhound farmer in the state of Kansas.

*Kansas' lucrative stud-dog business is another money-producing sidelight of the industry for the state, with some 60 public stud dogs generating another $280,000 each year. This does not take into account travel, food and lodging expenses associated with the business, which would be substantial.

*The National Greyhound Association in Abilene shows a gross operating revenue of $1.4 million, most of which comes from out-of-state.

*Abilene is also the site of the Greyhound Hall Of Fame, an internationally recognized museum that attracts tourists and visitors to Kansas. The Greyhound Hall Of Fame represents a half-million dollar investment.

*Dickinson County is the No. 1 greyhound producing county in America, with more greyhounds being raised in its boundaries each year than in any other county in the nation.

Figures, except for farm-investment survey, are for 1984, as compiled by the National Greyhound Association.

EXHIBIT E

SECOND INTERIM REPORT
Of The
COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING

2000 M Street, N.W.
Washington, D.C. 20036
(202) 254-8686

Washington: July 1976

COMMISSION ON THE REVIEW OF THE
NATIONAL POLICY TOWARD GAMBLING
2000 M STREET, N.W.
WASHINGTON, DC 20036

July 1976

JUN 13 '85 REC'D

We are happy to send you the enclosed Second Interim Report of the National Gambling Commission. This report contains the Commission's preliminary findings and conclusions concerning the fascinating and complex subject of gambling in America. It is intended to generate as much response as possible from its readers so that the Commission may have the benefit of the thoughts and expertise of the interested public. Readers are urged to send their comments to me before September 1, 1976, so that those comments may be incorporated in the Commission's final report, to be published this fall.

The final report will be submitted to the President and Congress. Its purpose is twofold: To advise Congress of the Commission's recommendations regarding the Federal Government's proper role in gambling regulation and to advise State and local governing bodies of the many factors surrounding the legalization or prohibition of gambling.

You were selected to receive this report because of the interest you have shown in the Commission and its work. If you feel there are any areas of inquiry into gambling that the Commission has not addressed or if you have specific requests for information concerning gambling in your State, I again ask you to let me know before September 1. The Commission hopes to make its final report the most complete report on gambling available.

Sincerely,

James E. Ritchie
Executive Director

Enclosure

DC GSA 76.10571

SECOND INTERIM REPORT

Commission on the Review of the National Policy Toward Gambling

Washington: 1976

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INTRODUCTION

More than 60 percent of all adult Americans gamble--both legally and illegally. In 1974, at least $24 billion was wagered--and, at a minimum, $5 billion of that amount was bet with illegal operators. Today, 33 States have some form of legal gambling, and others are considering legalization.

As legal forms of gambling increase, the States are faced with a number of problems: How can State treasuries obtain the largest profits possible from the legalized games? How can the crime and corruption often associated with gambling be controlled? What Federal laws now interfere with State gambling policy? Should these laws be changed? How does legalized gambling affect society? What is the impact of legal gambling markets on the illegal games?

To date, most decisions about instituting legal gambling, allocating law enforcement resources for gambling, and establishing revenue priorities have been based on guesswork and emotion rather than hard fact. No comprehensive, systematic study has ever before been conducted to obtain the kind of information needed to formulate sound gambling policy.

The Commission on the Review of the National Policy Toward Gambling was created to examine the entire body of law and custom that governs gambling, and then to develop uniform guidelines to aid all levels of government in fashioning reasonable statutory and administrative policies to deal with the various aspects of the activity. It is the first national commission to conduct an in-depth study of the complex legal, economic, political, and sociological aspects of gambling. Its findings will help dispel much of the misinformation about gambling that too often has passed for fact.

The Commission was established by the Organized Crime Control Act of 1970, in a section of the law (Title VIII) that contained the first direct Federal prohibition of intrastate gambling activities. Title VIII gave to the Government the authority to intervene against certain intrastate gambling occurrences, and to prosecute public officials in cases of bribery involving illegal gambling operations.

At the same time, however, the Congress realized that while Federal antigambling authority had been strengthened, a number of States were considering legalization of some gambling activities, thus creating the potential for conflict between Federal and State law. It also recognized the necessity of a thorough survey of Federal and State gambling statutes: some laws may be outdated, and others--especially Federal and State laws--may conflict.

The act required the Commission to undertake a "comprehensive legal and factual study" of the country's gambling policy as it is manifested in laws and regulations at every level of government. The act mandated, further, that the Commission review the effectiveness of the entire criminal justice system--law enforcement, the courts, and corrections agencies--in implementing these laws. It also gave the Commission the task of studying the experience of foreign governments in dealing with gambling and assessing their relative success or failure in doing so.

Finally, the Commission was asked to propose--as a result of its research and the conclusions drawn from it--appropriate modification of Federal and State laws and practices. As a Federal agency, the Commission paid particular attention to the utilization of Federal gambling statutes.

Commission membership includes four Senators and four Representatives selected by congressional leadership, and seven public members, selected by the President.

The Commission began, after its first meeting in January 1974, to collect, review, and summarize all available data on gambling. Staff members and consultants prepared studies on Federal and State gambling statutes, the existing gambling literature, the social and behavioral aspects of gambling, the corruption of officials and police by gamblers, and position of major religious groups toward gambling, and the experience of foreign governments with gambling. These papers are available through the National Technical Information Service (NTIS), Springfield, Virginia 22151. (See Appendix for titles of studies and ordering information.) The Commission's First Interim Report, published in April 1975, is available from the Government Printing Office, Washington, D.C. 20401.

The Commission also contracted for a national survey of citizen gambling participation and public attitudes toward gambling. The preliminary findings of that survey are contained in this report. A more complete review will appear in the Commission's final report.

In addition, the Commission has held hearings around the country on a variety of gambling-related subjects in order to obtain local and regional viewpoints and solicit the knowledge and opinions of experts in the field. Both proponents and opponents of the various gambling issues were invited to testify. Topics discussed include sports betting, casinos, on- and off-track betting, lotteries, law enforcement, the social consequences of gambling, religious views on gambling, revenue-producing aspects of gambling, organized crime as it relates to gambling and the effect of Federal statutes and regulatory practices on legal gambling industries. (Summaries of the transcripts of these hearings, as well as the transcripts themselves, will be available through NTIS.)

The Commission's third and final report, to be published in the fall of 1976, will be submitted to the President and Congress. That report will be the most thorough study of the laws and history of gambling ever published. It will include the documents and summaries of findings produced by the Commission, as well as its final recommendations. (Because its research into these subjects is not yet complete, the Commission will address the problems posed by illegal gambling industries, such as numbers and wagering on sporting events, as well as the influence of organized crime on legal and illegal gambling operations in its final report.) The Commission's final report is intended to serve as a reference work for lawmakers, criminal justice professionals, scholars, and all persons interested in the complex and controversial subject of gambling. It will assist administrators and legislators at all levels of government in developing more sensible and constructive policies toward gambling.

The Commission believes that, under its mandate, it has the responsibility to provide Congress with guidelines to follow in developing, refining, or repealing Federal laws affecting gambling. At the same time, the Commission wishes to provide the States with advice on the consequences of legalization of particular forms of gambling and to make recommendations concerning the implementation of the various types of legalized gambling.

The Commission firmly believes that it must have the benefit of the knowledge and reactions of the interested public so that it may carry out its responsibilities as fully as possible. To that end, the Commission has prepared this Second Interim Report. This report is designed to generate as much public response as possible before the Commission makes its final recommendations. Some of the positions the Commission is now advocating are highly controversial; in other instances, the Commission is exploring alternative suggestions and solutions. The reactions the Commission receives from the public will be reflected in the positions it adopts and in its final report.

In order to reach a wide segment of its constituency directly, the Commission has scheduled a number of seminars to be held this summer around the country. At these seminars, the Commission will discuss--and perhaps debate--each segment of the report with special interest groups, professionals in the field, and law enforcement personnel, as well as the interested public.

In addition, the Commission strongly urges that readers of this report make their views known by sending their comments to James E. Ritchie, Executive Director, National Gambling Commission, Suite 3302, 2000 M Street, Northwest, Washington, D.C. 20036 before September 1, 1976. All comments will be given careful consideration.

CHAPTER 1. THE NATIONAL POLICY TOWARD GAMBLING

> THE NATIONAL POLICY TOWARD GAMBLING: The Commission believes that the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders. The only bases for Federal involvement are the protection of the national interest and the prevention of interference by one State with the gambling policies of another. The Commission recommends that Congress consider enacting a statute to insure the States' continued power to regulate gambling.

Throughout American history, the prohibition and regulation of gambling activity has largely been a function of State rather than Federal Government. Federal law enforcement jurisdiction over gambling-related activities has been limited to the power of Congress to regulate interstate commerce.

There is considerable diversity among the States concerning legalization of the various forms of gambling. Thirty-two States permit parimutuel wagering on horseracing, 13 States conduct lotteries, one State sanctions casino gambling, and two States permit sports bookmaking; varying treatments exist for dogracing, bingo, cardplaying, and off-track betting. To a considerable extent, these different State policies have resulted from the holding of referenda, in which the people themselves have directly determined the policies of the States. Further, States differ in their criminal prohibitions of gambling--for example, some States, like Indiana, make it a crime to place a bet, while in others only the operator of the game is punishable.

Because this diversity of treatment reflects the fact that the populations of the States differ in their views on gambling, the Commission does not believe that the Federal Government, which is further removed from the people than are their State governments, should substitute its judgment for that of the States in this area. Gambling has customarily been controlled by State agencies, which can be flexible and responsive to local demands; the Commission finds no public interest in preempting this authority by the imposition of binding national standards. While we express no predisposition on the appropriate roles of State and Federal governments in the regulation and control of other activities, we do believe that where gambling is concerned there should be an absolute reluctance on the part of the Federal Government to interfere with State policies. To the States should be left the determination of what forms of gambling, if any, are to be permitted; how to operate or regulate those forms of gambling that are authorized; and what the objectives of any changes in present laws are to be. From a purely pragmatic standpoint, this should result in the evolution of more efficient gambling policies in the United States, as different States experiment with different approaches, discarding those that are unsuccessful and emulating those that have been effective in other States. But States that choose not to give legal sanction to gambling in some or all of its forms should not have it imposed upon them by either their sister States or the Federal Government.

The proposition that the States should determine their own gambling policies is consistent with the historical role played by the Federal Government. Congress has generally protected the autonomy of the States, exempting gambling which is legal in the State where it occurs from the application of the Federal criminal laws. Indeed, Congress has justified its actions as designed to assist the States in the enforcement of their gambling laws. Accordingly, a national policy which assigns to the States the determination of what forms of gambling are to take place is merely a reaffirmation of the present position of the Federal Government. To the extent that the Federal gambling statutes interfere with the ability of the States to set their own gambling policies without the presence of an overriding national concern, these statutes should be revised. And to the extent that the practices of the Federal agencies vary from this standard, they should be changed.

In addition, it is necessary to determine if the body of Federal gambling law taken as a whole interferes with the ability of the States to determine their own gambling policies.

TAXATION

In many States, gambling has been deemed an appropriate method of raising revenue to support the costs of government, either through direct State operation or a system of licensing fees and taxes. The authority of the Federal Government to tax these State gambling operations cannot be questioned.

Nevertheless, the Commission believes that Congress should take great care in the exercise of its taxing powers so as not arbitrarily to discourage State policies. Not only might the Federal Government stifle State initiatives in raising revenues to meet the expenses of State and local government, but Federal taxes on State gambling operations may render State governments incapable of competing with those illegal games they seek as a matter of State policy to eliminate through the provision of a legal alternative. The Federal Government should cooperate fully with the States, so that inflexible taxation policies do not bring about unintended results.

COMMERCE CLAUSE

The Organized Crime Control Act of 1970 for the first time made certain violations of State gambling laws Federal offenses whether or not an interstate connection or effect is established for the particular crime. Thus, even purely local gambling activity can now be the subject of Federal legislation.

Consequently, the Commerce Clause of the U.S. Constitution places a potential limitation on the ability of the States to permit or prohibit gambling activities within their borders, since such regulations may not unduly burden or discriminate against an activity of interstate commerce. It is noteworthy that there has never been a successful judicial challenge of a State gambling statute on these grounds; indeed, this is most unlikely to occur. Nevertheless, the historical development of the Commerce Clause suggests that the expansion of Federal jurisdiction may occur in ways not presently foreseen. Moreover, statutes once enacted by Congress may be interpreted by the enforcement agencies and the courts to have a more extensive scope than their legislative sponsors had anticipated. Because the Commission is charged with recommending gambling policies for the future, any potential problems in the jurisdictional framework upon which our recommendations are based should be anticipated and, where necessary, corrected by remedial legislation. The Commission thus believes that Congress should consider taking action to protect the States' continued authority to determine their own gambling policies.

RECOMMENDATION

An appropriate method of achieving this objective would be the enactment of a Federal statute specifically empowering the States to regulate gambling within their borders. This would put the full weight of Congress behind State gambling legislation to protect it from attack on jurisdictional grounds.

This approach has been taken by Congress and upheld by the Supreme Court in many other areas, and it would be equally appropriate if applied to State regulation of gambling. At a stroke, Congress would protect legitimate State gambling statutes--whether civil or criminal--from judicial challenge on the ground that they improperly interfered with interstate commerce, thereby insuring that State autonomy in the regulation of gambling would be reconciled with the authority of Congress to legislate in the national interest. This elevation to *de jure* status of the current *de facto* policy of the Federal Government to leave the regulation of gambling to the States would, by removing doubt about the scope of State jurisdiction, serve to provide a solid foundation for the future development of sound gambling policies.

The Commission emphasizes that such a statute would not foreclose the authority of Congress to legislate with respect to gambling where a Federal presence became necessary. Congress could selectively enact statutes concerning those areas which it deemed to involve the national interest, and could act to prevent the channels of interstate commerce from being used by some States to interfere with the gambling policies of other States. We submit that such a protection of State and national interests would conform with the sound principles of federalism upon which this country was established.

CHAPTER 2. FEDERAL GAMBLING STATUTES

In this chapter, the Commission reviews all existing Federal statutes concerning the prohibition, regulation, or taxation of gambling activities. The review includes a discussion of criminal, tax, and lottery laws relating to gambling and whether or not each statute is consistent with the national policy toward gambling. In some instances, alternative solutions to the problems posed by these statutes are discussed. In others, the Commission recommends changes in law or policy to effect the national policy.

CRIMINAL STATUTES

Statutes Prohibiting Interstate Gambling Activity

Modern Federal legislation outlawing certain gambling activities began in 1948 with the passage of 18 U.S.C. 1081-1083, prohibiting the operation of gambling ships off the coasts of the United States. In the 1950's the Special Senate Committee to Investigate Organized Crime in Interstate Commerce (the Kefauver Committee) produced a group of statutes, 15 U.S.C. 1171-1177, known as the Johnson Act, which prohibits the interstate transportation of gambling devices. The act was aimed at "nation-wide crime syndicates;" according to the legislative history, its main purpose is to support State policies outlawing such devices as slot machines. However, it also provides an exemption for such transportation into a State where the devices in question are legal. The Johnson Act was the only statute that brought the FBI into gambling enforcement until the 1960's, when 18 U.S.C. 1084 and 18 U.S.C. 1952-1953 were enacted for the purpose of attacking large gambling syndicates that use interstate facilities. These statutes, when recently combined with investigative methods available only to Federal authorities, enabled the Federal Government to deal with large-scale interstate gambling operations--which the States and local governments, because of jurisdictional limitations, were unable to do.

18 U.S.C. 1084 prohibits the use of communications facilities to transmit wagering information or bets in interstate commerce. An exception to this prohibition permits interstate transmission of the proscribed information for purposes of news reporting or for wagering purposes between two States where such wagering is legal. 18 U.S.C. 1953 extended existing prohibitions against interstate transportation of wagering paraphernalia. 18 U.S.C. 1952 prohibits interstate travel or the use of interstate facilities to promote a gambling enterprise which is in violation of State or Federal law. All legal gambling operations are excluded from its application.

In actual application, most of the indictments issued under 18 U.S.C. 1084, 1952, and 1953 involve the use of communications facilities on an interstate basis. The statutes have been used extensively against operations doing an interstate layoff business. They were also used against the lavish, large-scale illegal casinos that were common in some cities during the 1940's and 1950's.

18 U.S.C. 1084, 1952, and 1953 were heavily utilized during the mid-1960's. The number of indictments under all three statutes was highest in 1971, but has declined each year since.

Testimony received by the Commission from Federal law enforcement personnel indicates that these statutes have been successful in eliminating many operations specializing in interstate layoff bookmaking. However, other testimony from these officials indicates that efforts utilizing these statutes have not eliminated or even reduced illegal gambling: bookmakers may have had to revamp their operations, but the operations continue, primarily on an intrastate basis.

Before these statutes were passed, when large interstate layoff operations existed throughout the country, a single layoff operation would often service bookmaking establishments in a number of States. Similarly, some illegal casinos transacted their business across State lines. These operations were known to be related to organized crime. Consequently, the Commission agrees with Congress that organized crime represents a threat to the Nation and thus is properly the target of Federal legislation.

The effectiveness of Federal law enforcement agencies in combating interstate gambling syndicates has exceeded that of State or local efforts aimed at the same operations. The statutes under discussion--primarily 18 U.S.C. 1952--were appropriately used in eliminating the regional layoff centers that were an important source of organized crime's control over bookmaking in the 1950's. The resources available to the Federal Government--such as the wiretap provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, immunity capability, and special grand juries--have made Federal investigative efforts more effective than the States' in gambling cases, particularly when coupled with the organizational and jurisdictional capabilities needed for interstate surveillances. While this may not have led to an overall decline in illegal gambling, it is thought to have made control by organized crime more difficult.

The prohibitions contained in the statutes are also useful in preventing a State with legal gambling from interfering with the gambling policies of another. Thus, a legal bookmaker in Nevada is prohibited from laying off his bets to bookmakers in California, where this type of gambling is illegal. The Commission finds this to be consistent with the national policy on gambling, and believes that States that choose to prohibit gambling within their boundaries are well served by those Federal statutes.

Because it is a matter of unqualified national concern that a State permitting gambling not impose its gambling beliefs and practices upon a sister State with differing standards, the Commission recommends that legislation prohibiting interstate gambling or gambling-related activities be retained. However, the Commission feels that there is duplication in the existing statutes that could best be eliminated by drafting a new statute covering the necessary elements of interstate prohibition. This statute would not in any way erode Federal authority over interstate gambling offenses, but would eliminate the duplication that presently exists.

Statutes Prohibiting Intrastate Gambling Activity and Related Bribery

Federal jurisdiction over gambling via the Commerce Clause of the U.S. Constitution was significantly expanded with the passage of the Organized Crime Control Act of 1970. Federal involvement had been predicated on a specific showing that interstate commerce was being used by the illegal gambling business; under 18 U.S.C. 1955, a part of the act, Federal jurisdiction was predicated on a congressional finding that illegal gambling businesses of a certain size have a deleterious effect on interstate commerce. (For purposes of Section 1955, an illegal gambling business is defined as one which involves five or more persons in the conduct, financing, directing, managing, or ownership of a gambling business doing a gross volume of $2,000 per day or which operates continually over a 30-day period, and which is in violation of the law of the State where it occurs.) The chief justification for Federal jurisdiction was the additional congressional finding that syndicated gambling forms the largest single source of revenue for organized crime and helps to finance its other activities.

The Commission favors Federal legislation aimed at organized crime. Inasmuch as organized crime tends to benefit from large illegal intrastate gambling businesses, a Federal statute prohibiting such businesses is appropriate. However, some witnesses before the Commission have expressed concern that prosecutions brought under 18 U.S.C. 1955, although meeting its statutory requirements, do not reflect Congress' specific desire to confront organized crime through the statute. A number of these indictments clearly have been directed against gambling businesses that are not, in fact, organized crime operations. The Commission does not question that some gambling operations that meet the statutory requirements of Section 1955 are either directly controlled by organized crime or provide revenue to it, but it finds that there are illegal operations not so connected but still subject to prosecution under the statute. It is therefore necessary that the Department of Justice be selective in choosing cases to be prosecuted under this statute. Materials made available to the Commission suggest that such selectivity has not always been applied.

The Commission has discussed possible solutions to the problems arising from this statute. One solution, possibly the more workable one, would modify the existing elements of 18 U.S.C. 1955 to insure that its application reflects the legislative intent to attack organized crime. For example, an increase in the minimum required volume of business from $2,000 to $10,000 a day is more likely to result in application of the statute to operations thought to be connected with organized crime. Another element subject to modification is the requirement of five or more persons, which is unduly restrictive when dealing with bookmaking operations. Reduction of this requirement to three or more persons would permit prosecution of high-volume bookmaking operations that are currently immune from prosecution. A further modification might well be the inclusion of a definition of the verb "conduct" to conclusively preclude from indictment a person whose role in the illegal gambling business is merely that of a player.

Another alternative is the retention of the statute in its present form with a caveat that it be enforced in a more selective manner than before. While it is difficult to impose this criterion of selectivity through the legislative process, it can be accomplished by means of various oversight committees, or reviews by appropriations subcommittees of the U.S. Congress. Strict adherence to the principle that only in limited instances should intrastate gambling become the subject of Federal enforcement might bring the statute in line with its legislative intent.

Repeal of the statute is another alternative. Many people believe Federal enforcement of what is essentially a local problem with no effect upon interstate commerce to be a counter-productive activity. Repeal thus would limit Federal enforcement authority over purely intrastate gambling activities to whatever forms of Federal taxation remain in effect. One short-term effect of repeal would be a marked increase in both the number of intrastate gambling operations and the gross volume of these operations. Over a longer term, however, this increase, if combined with continuation of existing State prohibitions, might well cause sufficient reaction from the public to engender either a repeal of the prohibiting legislation or even stronger enforcement policies to insure prohibition on a local level.

18 U.S.C. 1511, also a part of the Organized Crime Control Act, prohibits conspiracy to obstruct law enforcement in order to facilitate an illegal gambling business if one of the coconspirators is an elected or appointed official of a political subdivision. In this instance, the Commission believes that Federal legislation aimed at eliminating corruption fostered by illegal gambling activities is appropriate.

The Commission is aware that, in a number of cases developed under this statute, no prosecutions were obtained because of the statutory requirement that two or more persons must be involved in the bribery attempt. In these cases, the public official offered the bribe feigned cooperation with the briber, only to have the prosecution declined on the grounds that, in effect, only one person was involved in the attempt--a violation of the requirement.

The Commission recommends that this statute be expanded to cover bribery arising out of other illegal activities as well as gambling. The Commission further recommends that appropriate language be added to the statute to allow for prosecutions in cases involving the pretense of cooperation to develop bribery cases.

TAX STATUTES

Although Federal taxation of gambling activities takes various forms (e.g., income tax on gambling winnings, excise tax on gross wagers received by an individual in the business of accepting wagers, occupational stamp tax applicable to each person employed in the business of accepting wagers) all existing tax laws were passed primarily for the purpose of raising revenue, and only secondarily to attack illegal gambling.

Income Tax (Section 61 of the Internal Revenue Code of 1954)

This section provides the legal basis for the taxation of all income from any source, including gambling winnings.

Section 165(d) of the 1954 Internal Revenue Code allows a specific deduction for gambling losses (to both legal and illegal sources) up to but not exceeding the extent of gambling winnings. There appears to be almost no voluntary compliance with the reporting and payment requirements with respect to the taxation of gambling winnings. Under current regulations, offices accepting legal parimutuel wagers must file forms 1099 for wins of more than $600 involving odds higher than 299 to 1. Apart from the income reported under this provision--a very small fraction of total parimutuel winnings--the Internal Revenue Service is unable to distinguish reporting of gambling winnings on personal income tax forms because these winnings are reported as "Other Income," for which no distinction for gambling winnings is required.

The IRS reports no resources specifically devoted to enforcing this provision of the tax codes. In materials provided to the Commission, the IRS stated that the present tax laws affecting gambling winnings are operating in "a highly unsatisfactory manner."

While the Federal income tax provisions relating to gambling do not serve to protect the interests of one State from the gambling policy decisions of another, they nevertheless involve substantial State as well as national interests. For example, there is reason to believe that taxes on legal gambling winnings serve to deter some large bettors from using legal betting facilities when faced with a choice between legal and illegal facilities. A State that sees legal betting as a technique for depriving illegal operators of their market may choose to exempt legal winnings from State income tax; however, that approach would be ineffective if the Federal provisions were not also changed.

While Congress has never wanted to promote gambling, the considerations mentioned above may suggest that Congress consider adopting a policy, employed by many other countries, of exempting gambling winnings from income tax when such winnings are derived from a legal entity. However, this possible alternative must be weighed against the widespread feeling in this country that it is inequitable to exempt from taxation income earned in such an arbitrary fashion while taxing income from earned wages.

It is quite possible that Congress might want to distinguish, for tax purposes, between those gambling businesses conducted by a State and those legalized by State statute and operated by a private enterprise. In line with such a distinction, it has also been suggested that net gambling winnings from State-operated gambling enterprises be excluded from gross income, provided there is affirmative reporting of the amount and a specific claim of the exclusion. Either of these alternatives is viewed more favorably by the Commission than is a continuation of existing policy. Congress has always had broad discretion in the determination of what constitutes income, as well as what deductions from income are allowable. If Congress were to remove legal gambling winnings from taxation, State policies that discourage illegal gambling by providing incentives to participate in legal gambling might be strengthened.

In America, gambling has always been viewed as an activity that has a negative impact upon society and one that should therefore be taxed. However, in recognition of the entry of an increasing number of States into various gambling endeavors, a different rate of taxation could be applied to winnings derived from legal gambling entities. Alternatively, allowance could be made for an itemized deduction of that portion of the bet earmarked for the State; for example, if 45 cents of a $1.00 lottery ticket purchase is allocated to the State, then that 45 cent portion could be taken as a deduction, using the total amount wagered ($1.00) only for purposes of the amount wagered in computation of net gambling income.

If despite these recommendations, existing policies are retained, and States are confronted with problems arising from the current gambling tax statutes, Congress might well consider one way to ease one of those problems: Repeal of the regulation that currently requires the filing of a form 1099 for horseracing winnings of more than $600 at odds greater than 299 to 1. The current system is a burden to the racetracks; it encourages falsification of reporting, and it provides little revenue. Moreover, any further extension of this regulation would prove counterproductive to State-operated forms of gambling, if the players were to turn to illegal games in avoidance of the regulation.

In addition, 26 U.S.C. 1441(b) requires the withholding of 30 percent of all income earned by nonresident aliens. This section has been construed by the IRS to include gambling winnings. In August 1975, the Reno, Nevada District Office requested technical advice concerning this section, since administrative difficulties had arisen in its application to casino winnings. IRS has declined to make public its response to this request.

The IRS would favor the expansion of this concept to other categories of gambling winnings, as was evidenced by its recent support for legislation that would withhold 20 percent of all prizes of $1,000 or more won in State lotteries, keno or bingo games, or from exotic wagers on parimutuel racing for which the odds against winning exceed 300 to 1. The Commission has reviewed this legislation and its likely impact on both legal gambling industries and individual participants in games of chance. It has examined the possibility that substantial administrative burdens might be imposed upon legal gambling businesses, and that illegal forms of gambling might become more attractive to the players, thereby reducing revenues to the States and increasing illegal gambling. It has questioned whether there is a real correlation between winnings on a given day and the overall tax liability of the participant, since gambling losses are deductible from winnings over the course of a year and most players lose on balance. And it has sought to determine the amount of revenues that would ultimately be raised by such a measure, and whether such revenues would warrant the administrative expenses and social and economic consequences involved. Using the above criteria, the Commission seriously questions whether the withholding measure presently before the Congress would serve to further any identifiable national interest; indeed, it would appear that such withholding might interfere with the policies of numerous State governments.

The Commission does recognize that the present use of forms 1099 at racetracks to report large prizes is subject to circumvention by unscrupulous players; however, should the regulation requiring form 1099 at racetracks not be repealed, it believes that a simple modification making it a criminal violation to wrongfully receive funds reported on such forms would eradicate the problem of false reporting, and would be preferable to the imposition of withholding on winnings.

Wagering Excise Tax (26 U.S.C. 4401) and Wagering Occupational Stamp Tax (26 U.S.C. 4411)

These taxes were originally promoted in 1951 as revenue-producing measures representing an estimated annual gain of $400 million. (Revenues from these taxes, however, have averaged only $7 million a year.) An additional goal advocated by proponents of the tax bills was the curbing of illegal wagering.

On December 1, 1974, the excise tax was changed from the original 10 percent of gross wagers received by an individual in the business of accepting wagers to 2 percent; and the occupational stamp tax, applicable to each person employed in the business of accepting wagers, was changed from $50 to $500 in an effort to enable legal bookmakers who pay the taxes to compete more effectively with their illegal counterparts. This change also indicated a recognition that legal gambling industries, increasing in recent years, should not be subject to discriminatory tax treatment.

These legislative changes in the wagering tax schedules added restrictions on the potential use of information required by the tax provisions, as well as an immunity provision. The legislation provided criminal sanctions for disclosure of documents to any person except in connection with the actual administration or enforcement of the tax laws.

Enforcement of these statutes was delegated by the Department of the Treasury to its Bureau of Alcohol, Tobacco and Firearms (ATF), rather than to the Internal Revenue Service. No additional appropriation has been provided to ATF for this new enforcement responsibility.

It is clear that the wagering taxes have not diminished the volume of illegal gambling. Congress has not given enforcement agencies the additional manpower needed to enforce these statutes, thus weakening their effect. Further, it would appear that State-sanctioned forms of gambling are the most adversely affected. Imposition of the 2 percent excise tax, for example, impairs the ability of legal bookmakers in Nevada to offer the same terms as illegal bookmakers. If a legal bookmaker passes the tax on to his customer, he will most likely drive the customer to an illegal operation; yet if he absorbs the tax himself, he may very well drive himself out of business. It has been established that absorption of even the 2 percent tax by a legal bookmaker makes his business a marginal one, at best, from a profit standpoint. The Commission believes that these taxes will prove seriously detrimental to States that legalize additional forms of gambling.

The Commission, in keeping with its national policy, believes that the States should be permitted individually to levy whatever taxes they consider proper on legal gambling concerns. As the States have demonstrated the ability to do this, it should preclude the imposition of Federal taxation.

There are proponents of a system of Federal wagering taxation that would impose excise and occupational taxes only upon illegal forms of gambling, thereby negating its deleterious effect on legal industries. Another proposal would provide an exemption from excise taxes for gambling enterprises regulated by a State, thereby precluding interference with legal State games but still allowing IRS prosecution of illegal operations. It is thought that this approach would preclude a judicial challenge on grounds that the tax is being used as a penalty. Other approaches to the taxation problem include maintaining the wagering taxes as they presently exist and returning tax revenue derived from the legal industries as a credit to those States responsible for generating it, and placing the excise tax on the gross winnings rather than the gross volume.

The occupational stamp has created problems for legal bookmakers in Nevada because it is nontransferable. If retained, the stamp tax should be made applicable to the operator in a specified amount, thereby negating the present requirement that stamps be repurchased every time there is an employee turnover. The operators could be required to register all employees, and the amount could be assessed on a sliding scale depending upon the gross volume of the business. It should also be noted that licensing requirements for legal bookmakers in Nevada are more stringent that those required for purchase of this stamp. Consequently, it might prove feasible for States to impose their own regulatory stamp tax provisions and collect the revenues for themselves.

Occupational Tax on Coin-Operated Gaming Devices (26 U.S.C. 4411)

This statute was passed in 1941 for the primary purpose of raising revenues. The statute imposes a $250 tax per machine on anyone who maintains a coin-operated gambling device for use on his premises.

This tax has produced more than $307 million since 1955. The revenues to the Federal Government realized from this tax, however, have dropped substantially since 1971, when Congress enacted legislation providing a credit against Federal taxation of up to 80 percent for similar taxes paid to the State, if the gambling devices are legal.

This statute does nothing to protect one State from the gambling policies of another. Nor is any national interest served by this tax. There is Federal criminal enforcement authority over gambling devices via the Johnson Act (15 U.S.C. 1171-77), thereby negating any need for Federal regulation through taxation, particularly when the bulk of the taxes collected are returned to the State. Repeal of this tax entirely would leave the question up to those States permitting that type of activity and satisfies the requirements of the national policy on gambling.

LOTTERY STATUTES

Statutes Restricting Use of Postal, Broadcasting, and Interstate Commerce Facilities by Lotteries (18 U.S.C. 1301-1304, 1307, and 3005)

The facilities of interstate commerce remain closed to lotteries which are not operated by State governments. Further, the Postal Service has construed 18 U.S.C. 1302 to apply to nonlottery activities such as the mailing of gambling-related brochures by legal Nevada casinos.

Congress has chosen to permit State lotteries to utilize broadcasting and postal facilities to prevent Federal interference with a form of revenue-raising duly authorized by 13 States. At the same time, Congress intended to protect the interests of States that wish to prohibit lotteries; this is in accordance with the philosophy of this Commission. However, by limiting lottery-related mailings to addresses within the borders of a State authorizing the game, the Federal Government prevents the distribution of lottery materials to States in which their use may be legal. Lottery tickets and advertisements should not be barred from the facilities of interstate commerce when they are legal both in the State of origin and in the State of destination. Broadcasts of information about legal lotteries should be permitted by licensees in any State where the purchase of the tickets that are the subject of the broadcast is authorized by law.

This can be accomplished without sacrificing the interests of the nonlottery States. Under such a plan, a State wishing to prohibit the sale of lottery tickets would only need to enact a statute prohibiting their sale for the full weight of the Federal regulatory and law enforcement machinery to be utilized in violations involving interstate commerce.

The Commission does not believe that the policy described above should be limited to lotteries operated by State governments only. If lotteries that are run for commercial, recreational, or charitable purposes are permitted within a State, there is no reason for the Federal Government to treat them differently from lotteries operated by a State. As long as the interests of abstaining States are protected, there is no justification for Federal restriction of such activities when they are condoned in the State where they occur. In addition, the Commission does not believe that lotteries that base their results on sporting events should be treated differently by the Federal Government from lotteries that rely on other means of determining the outcome. As long as the method of choosing winners is authorized by the State in which the game occurs, the Federal Government should treat all games alike. Indeed, the Commission believes that Federal policy should be uniformly applied to all types of gambling construed to be covered by 18 U.S.C. 1302, not merely to lotteries. For example, since the Postal Service has construed 18 U.S.C. 1302 to apply to casinos, casinos should be included within the scope of its exemptions in Section 1307 as well.

Finally, the Commission believes that Federal law should not prohibit the mailing, interstate carriage, or broadcasting of advertisements concerning gambling activity that takes place within the confines of a State where it is legal. The operators of gambling businesses should be able to publish information about participation in their games, provided that it is legal to participate in those games while the player is physically present in the State; the Federal Government has no proper role in preventing the dissemination of such information. An exception to this policy would arise when a State had acted to regulate or prohibit such advertisements; then the Federal Government should not permit the facilities of interstate commerce to be used to frustrate such a policy.

Statutes Governing Financial Institutions (12 U.S.C. 25(a), 339, 1829(a), and 1730(c))

These statutes were enacted in 1967 to prohibit all federally controlled or insured financial institutions from participating in lottery-related activities, so as to preserve their reputation for safety and solvency. Although banks and lending institutions may not engage in the sale, redemption, or advertising of lottery tickets, they are permitted to perform "lawful banking services" for State-operated lotteries. This has been interpreted by the supervising agencies to include the storage and distribution of lottery tickets and receipts.

The Commission does not challenge the practices of the supervising agencies pursuant to the banking statutes. Nor does it question the decision of Congress that the institutions specified in these statutes should be free from active participation in gambling operations. The regulation of federally insured and controlled financial institutions is clearly within the power of Congress. The Commission has been presented with no evidence that this Federal policy has substantially interfered with the ability of the States to operate their lotteries. The Commission recommends no change in these statutes.

MISCELLANEOUS GAMBLING STATUTES

Historically, there have been other areas in which it was felt that antigambling proscriptions would be helpful, although these statutes have been utilized little, if at all, since their passage.

8 U.S.C. 1101, 1182. These provisions of the immigration and naturalization laws indicate the intent to exclude from naturalization persons with a history of illegal gambling violations. 8 U.S.C. 1182,

as originally written, was intended to exclude from entry into the United States aliens coming in to engage in "unlawful commercialized vice." Although the original bills contained no specific reference to gambling, a later attempt to clarify 8 U.S.C. 1182 led to inclusion of the specific language of 8 U.S.C. 1101. The definition of "good moral character" necessary for naturalization or relief from deportation contained particular language designed to exclude persons with a background of illegal gambling activity.

Although the Commission has been unable to determine the manpower or cost factors attributable to administration of these statutes, it is nevertheless of the opinion that they should be retained. Immigration continues to be a matter of national concern, and exclusion of undesirable persons is unquestionably in the best interests of the country. So long as the exclusion is limited to persons with illegal gambling backgrounds (along with the other specified illegal activities), the Commission urges retention of these provisions.

7 U.S.C. 2044. This statute, part of the Farm Labor Contractor Registration Act, permits suspension or refusal of a certificate of registration to a migrant farmworker crew leader convicted of a State or Federal law related to gambling. The intent of the entire Registration Act was to protect migrant workers from exploitation by irresponsible crew leaders. The provision relating to gambling convictions was predicated upon a finding that gambling was one of the several schemes through which unscrupulous crew leaders were able to take advantage of their workers.

Although it could be argued that this statute was designed to serve a useful purpose, it is the Commission's opinion that it should be repealed. It is true that migrant workers move from State to State, thereby affecting interstate commerce. However, as the several States continue their diverse views as to the legalization of various forms of gambling, the Commission believes that each State should retain the right to permit or deny work privileges to persons convicted of gambling violations, without the infringement of the Federal Government upon their jurisdiction.

FCC Proscriptions. The Federal Communications Commission proscribes the broadcasting of certain horseracing information believed to provide assistance to illegal gambling operations. Licensees must normally wait until 30 minutes after a race has been run before broadcasting information concerning the outcome. This proscription struck at the practice of illegal horse bettors using the winnings of previous bets as the basis for subsequent wagers. No administrative sanctions have ever been issued under this policy, and it has never been extended to the broadcasting of information about other sporting events on which wagering, legal or illegal, takes place.

That this proscription has had an effect on illegal horserace wagering is evidenced by the complicated methods devised by illegal bookmakers to acquire race results and prices promptly. However, in an era when wagering on sporting events has become the major form of illegal gambling, as opposed to wagering on horseracing, the FCC policy may be overly selective. There is abundant evidence that sports betting is greatly affected by the broadcasting of the results or of the events themselves to the point that illegal wagering on such events increases by 10 to 15 times when the event is televised. Moreover, the same kind of "parlaying" of bets which characterizes horse betting also characterizes some sports betting; a bettor may place bets for evening games only after he has received the results of games played earlier in the day. (It is common practice for bookmakers to treat the televised Monday night games separately for wagering purposes, due to the heavy volume of wagering thereon.) *The Commission believes that the FCC proscription of horseracing broadcasts should be modified to treat consistently all information needed in illegal wagering operations. The FCC should either broaden its proscription to include sporting events, or narrow it to cover only the immediate broadcast of the prices paid on the winning horse, thus permitting the broadcast of the race results themselves.*

Department of Defense Practices. As a general rule, United States military personnel are not permitted to gamble while on Government property or while on duty. There are exceptions, however; for example, the Air Force allows limited card games or nominal games of chance to take place in open mess facilities where these activities do not violate local law or custom. All three military departments permit controlled bingo games on Government installations. While the Army and the Air Force prohibit the operation of gambling devices (slot machines), the Navy Department authorizes their use at overseas Navy and Marine Corps Club facilities outside United States territory, where United States and foreign laws permit. The devices are carefully controlled, and detailed regulations specify the rate of payback, auditing procedures, and related matters. Revenues from the devices benefit recreational activities, primarily clubs and messes. Other forms of gambling are prohibited at Navy and Marine Corps Clubs, with the exception of dice cups at the bar.

The Uniform Code of Military Justice also covers gambling-related activities by restricting behavior which is not in the best interest of the Services; for example, military officers may be subject to disciplinary action under that Code for gambling with enlisted men. The Army, Navy, and Air Force all require off-duty personnel to conform with the criminal gambling statutes of the jurisdictions within which they are located.

The Commission recommends that the Department of Defense reexamine its present policies toward gambling and make them consistent in all branches of the armed services. Those branches which have changed their practices in recent years should be required to assess the impact and effectiveness of those changes, and to report their findings to the Department so that it may include them in its study.

CONCLUSIONS

Criminal Enforcement

Primary responsibility for enforcement of gambling laws was vested in State and local agencies until the early 1960's. Although the Federal Government has had limited criminal jurisdiction over certain types of illegal gambling since 1948, it had no vigorous enforcement tools at its disposal until 1961, when Congress passed three antiracketeering statutes designed primarily to attack illegal interstate gambling (18 U.S.C. 1054, 1952-1953). Congress felt these statutes were necessary because, given the interstate nature of large gambling operations, no effective attack upon organized illegal gambling was being waged at the local level. In 1970, Federal jurisdiction was extended to cover intrastate gambling operations of a specified size, because these businesses were thought to have a deleterious effect on interstate commerce.

Enforcement of Federal statutes prohibiting gambling is vested in the FBI and in the Department of Justice, which has delegated this responsibility to its Organized Crime and Racketeering Section (OCR). Both of these agencies have testified extensively before this Commission. The agencies agree that the most valuable tool available to law enforcement agencies in their fight against illegal gambling is the use of court-authorized electronic surveillance, or "wiretaps." Wiretaps have been widely used in gambling cases since 1968, when they were legalized under the provisions of Title III of the Omnibus Crime Control and Safe Streets Act. In fact, 70 percent of all Federal wiretaps were used in connection with gambling investigations.

Although Federal officials have testified before this Commission that they believe existing statutes and enforcement procedures are adequate to combat illegal gambling, they concede that there has been no decrease in either the level of interest in, or the availability of, illegal gambling. In general, they say judicial and public apathy are the cause of this situation: only 23 percent of those convicted on gambling charges receive prison sentences, thus severely minimizing the deterrent effect of prosecution. This would seem to be borne out by the correlative statistic showing that approximately 80 percent of those convicted of gambling offenses are recidivists.

The reaction of investigative and prosecutorial agencies toward this public and judicial apathy has apparently been a restructuring of gambling enforcement priorities: In 1971-72, a program of intensified efforts toward gambling cases was undertaken by the FBI and Justice

Department. This program required that top priority be given to gambling investigations and prosecutions over a specified period.

These agencies subsequently determined, however, that even this extensive application of manpower and resources made little dent in the level of illegal gambling. They have now shifted toward a policy of "quality vs. quantity;" that is, only "significant" gambling cases are being investigated and prosecuted at the Federal level.

The Commission finds that the efforts of the FBI and the Department of Justice with respect to either a diminution in the volume of illegal gambling or an impact on organized crime through gambling statutes have been singularly unsuccessful. Illegal gambling has not been checked; indeed, it would appear that the dollar volume of illegal gambling is on the rise. Increased manpower and appropriations directed against gambling violators clearly had no impact Yet, the agencies continue to stress the need to fight organized crime through enforcement of gambling statutes without having shown any measurable impact on organized crime through past intensive enforcement efforts.

The Commission has repeatedly attempted to obtain records from these agencies that would permit a cost-benefit analysis of their efforts. In essence, their response has been that such records are not maintained inasmuch as the actual success of law enforcement cannot be measured by comparing cost to statistical accomplishments. The Commission disagrees; it recommends that records hereinafter be maintained that would permit measurement of the cost expended on gambling law enforcement against what such enforcement effort has accomplished. Thus, Congress may then determine the effectiveness of the statutes in question and the ability of government agencies to carry out responsibilities given them.

Tax Enforcement

The efforts of the Internal Revenue Service have been similarly unsuccessful in curbing illegal gambling. Significant revenues have not been produced through the income tax, since illegal players generally underestimate or fail to report their gambling winnings. The IRS routinely investigates, often in conjunction with Department of Justice Strike Forces, cases of possible income tax fraud by organized crime figures allegedly involved in illegal gambling; however, the impact of these investigations has been minimal.

The excise and occupational stamp taxes on certain gambling enterprises have also produced little revenue when compared to the amount of gambling the Service believes takes place. The IRS opposed the imposition of these taxes on the grounds that they would be unenforceable and unproductive, and would breed contempt for other tax provisions. Since 1968, there has been virtually no enforcement action against failing to pay these taxes, and the Bureau of Alcohol, Tobacco and Firearms, which has been given the responsibility for criminal enforcement of these laws but no funds to support that mandate, has relegated gambling offenses to a low standing in its order of priorities.

In sum, the income tax statutes relating to gambling have proven ineffective, as a revenue-producing measure, as a deterrent to illegal gambling, and as directed against organized crime. Indeed, the present Commissioner of the Internal Revenue Service has appealed for the elimination of the Service's law enforcement responsibilities. The function of the IRS should be primarily to raise revenues, and in the case of gambling, it has been notably unsuccessful. The Commission awaits with interest reactions to recommendations concerning repeal of wagering taxes and removal of gambling winnings from gross income classification for income tax purposes.

Civil Enforcement

A relatively recent tool brought to bear upon illegal gambling violators/ is the civil injunctive procedure provided by 18 U.S.C. 1961, *et seq*. A more extensive analysis of this procedure will be contained in the Commission's final report. However, the Commission finds that the ineffectiveness of the criminal justice system demands alternatives. Although used sparingly to date, civil injunctions imposed upon illegal gamblers may meet with more success, both from the standpoint of judicial enforcement and potential deterrence. Further study by the Commission in this area may reveal that increased utilization of these techniques combined with modification of existing criminal statutes may improve the results of the existing situation.

CHAPTER 3. STATE AND LOCAL GAMBLING ENFORCEMENT

INTRODUCTION

Most of the responsibility for enforcement of antigambling law rests with local police departments. Gambling enforcement has long been a source of serious problems to police. Enforcement efforts have never had more than a minimal impact on illegal gambling, which continues to flourish throughout the United States. Repeatedly, corruption investigations have found gambling to be the prime source of systematic corruption in police departments. Even where gambling enforcement is not frustrated by widespread corruption, the difficulties inherent in this area of law enforcement have often been a source of police morale problems.

The reasons for failure of gambling enforcement are not hard to find. Contradictory gambling policies and lack of resources combine to make effective gambling enforcement an impossible task. Police correctly perceive that citizens have little interest in the vigorous enforcement of antigambling laws. The National Gambling Commission's national survey established that most people--even those who do not favor legalization or decriminalization--regard gambling as having very low priority for police activity. The almost uniformly light sentences given to persons convicted of gambling offenses bear out the police view that judges do not regard gambling offenders as serious threats to the community. Similarly, prosecutors appear to reduce charges or decline prosecution in a substantial proportion of gambling cases presented by police. Finally, the people who run illegal gambling operations have often been connected to political machines so that corruptive influences may reach beyond the police department and make honest enforcement an even more difficult task.

The trend in gambling enforcement in recent years, perhaps in response to these problems, has been toward less activity by city police departments, together with an increasing role for State and Federal authorities.

ARREST TRENDS

In 1974, the most recent year for which nationwide figures are available, an estimated 61,900 persons were arrested for gambling in the United States. Gambling arrests account for 0.7 percent of the estimated 9 million arrests made for all offenses in 1974. For the past decade and a half, there has been a steady and substantial decline in gambling arrests. Most gambling arrests are made by police departments in large urban areas. In 1974, 66 percent of gambling arrests were made in cities with populations of more than 250,000.

Since 1972, FBI Uniform Crime Reports have included separate figures for three categories of gambling arrests: bookmaking, numbers/lottery, and all other gambling, consisting primarily of card and dice arrests, which are in large part low-level street arrests. (Bookmaking and numbers arrests are primarily of gambling operators and employees; "other gambling" often involves the arrest of bettors under public order statutes.) In 1974, 79 percent of gambling arrests were in the category of "all other gambling."

Persons arrested for gambling tend to be older than those arrested for other offenses. In 1974, the average age of persons arrested for gambling was 38.5; for persons arrested for all offenses, it was 26.8. Women are arrested at a lower rate for gambling offenses than for all offenses. Uniform Crime Reports reveal that blacks are arrested for gambling at a substantially higher rate than are whites or other races. Although blacks account for only approximately 11 percent of the total population of the United States, they accounted for 72.8 percent of gambling arrests in 1974. During the period between 1969 and 1974, arrests of white persons, as a percentage of all gambling arrests, declined 7 percent; at the same time, the percentage for black persons rose 6.3 percent.

OBJECTIVES

Police objectives concerning gambling regulation are broader than mere enforcement of the prohibitions against various gambling activities: they also include fighting organized crime, maintaining a favorable public image of the police department, keeping undesirable activities or persons out of the city, and maintaining public order. The objective of organized-crime control is reflected both in the intent of some gambling statutes and in the widely held police view that much illegal gambling is related, if not to crime syndicates, to other organized criminal activities such as loansharking and narcotics. The objectives of preserving the department's public image and of maintaining public order are somewhat related in that, where open gambling such as street card and dice games is permitted to continue, citizens are likely to conclude that police are either corrupt or derelict in their duty.

While full enforcement of gambling prohibitions is often the manifest goal of police departments, the actual goal is generally to achieve some degree of control over illegal gambling--that is, to maintain an enforcement effort sufficient to discourage open, flagrant disobedience of gambling laws and to avoid charges that the police are not doing anything about gambling. Police administrators are understandably reluctant to admit the existence of discretion broad enough to permit the establishing of policies aimed at achieving other goals than that presumed to be intended by statute--total prohibition. The fact remains, however, that police administrators have discretion in deciding how much effort is to be made to enforce the antigambling laws. And in the field, police officers have discretion in deciding which, and to a lesser degree how many, gambling offenders to arrest.

CONSTRAINTS

The Difficulties of Gambling Enforcement

The failure of full enforcement as a realistic goal has resulted from several constraints on gambling enforcement, involving the difficulties of enforcement, public attitudes, and the actions and attitudes of police and other criminal justice personnel. The failure of citizens to report illegal gambling makes it necessary for police to seek out violations. However, most gamblers restrict their activities to places well hidden from public and police view. (Numbers writing is usually conducted relatively openly, making it susceptible to police observation.) Numbers offices and banks, bookmakers, and operators of high stakes card and dice games, however, take elaborate precautions to avoid police detection.

The interjurisdictional nature of many gambling operations has increased the difficulty of gambling enforcement. Often police agencies in different jurisdictions fail to cooperate, and even where police agencies have worked together, cooperation has often been strained.

The Priority of Gambling Enforcement

Public apathy exerts a constraining influence on police gambling enforcement. A nationwide survey of citizens conducted for the National Gambling Commission found that there is widespread community feeling that enforcement of gambling laws is less important than enforcement of laws against crimes of violence, property crimes, or other vice offenses. Less than one-third of respondents indicated that they would report a person taking illegal sports bets, compared to more than twice as many who said they would report other crimes, such as robbery and the sale of marijuana. The survey found that citizens nevertheless believe that gambling offenders should be arrested.

Police tend to perceive public apathy toward gambling enforcement as being even greater than indicated by the citizen survey. Eighty percent of respondents to the National Gambling Commission's survey of a sample of Fraternal Order of Police (FOP) members agreed that the public does not care if gambling laws are enforced. In a University of Massachusetts survey of officers in a Western police department, 79 percent also believed that to be true.

Police themselves generally do not consider gambling to be a very serious crime. The FOP survey found that bookmaking and sports betting were rated as "not serious at all" or "not very serious" by 55 percent; running a numbers operation or policy wheel, by 34 percent; and running a card or dice game, by 48 percent. (In contrast, only 2 percent considered receiving stolen property to be nonserious.) At the same time, a substantial proportion of police support the legalization of various forms of gambling.

Police clearly hold the view that gambling laws are difficult to enforce: In the University of Massachusetts Police survey, 65 percent agreed that trying to enforce gambling laws is more frustrating than enforcing most other types of laws; 55 percent agreed that it is often impossible to get enough evidence to convict known street-level bookies; and 80 percent agreed that without special training or experience, the average police officer is not able to recognize evidence of an illegal gambling operation when he sees it.

Police are keenly aware that very little is likely to happen to gambling offenders beyond their arrest. More than 70 percent of FOP respondents agreed that prosecutors would rather not be bothered with gambling cases. Approximately 64 percent felt gambling defendants were usually found not guilty, and about 85 percent felt that local judges usually gave light fines or suspended sentences in gambling cases.

Available statistics indicate that a substantial proportion of persons arrested for gambling either are not prosecuted, are prosecuted on reduced charges, are not convicted, or, if convicted, receive sentences that do not reflect the statutory provisions for gambling offenses.

Given these attitudes and practices, it is not surprising that police do not attempt full enforcement of gambling laws.

Corruption

Corruption is yet another constraint on effective gambling enforcement. Investigations of police departments by outside agencies have invariably uncovered corruption related to gambling enforcement. The most recent examples are Philadelphia and New York, where investigations exposed widespread and systematic payoffs to both plainclothes and uniformed police officers by gambling operators. Corruption in gambling enforcement is not a recent phenomenon; many major cities have experienced repeated gambling corruption scandals. Gambling corruption has occurred in many smaller cities as well.

Gambling corruption has an impact not only on the quality of gambling enforcement, but in other areas as well. Involvement in gambling payoffs often leads to corruption in other areas. Widespread corruption in a police department not only damages the department's ability to perform its function but also causes a loss of public confidence in police integrity.

Although other parts of the criminal justice system and elected officials can also be corrupted by gambling operations, police nevertheless remain the most important target for change: Gambling represents a major corruption hazard for police, but is not a primary source of corruption in other agencies. And police and their attempts to enforce gambling laws are ultimately affected when gambling corruption occurs elsewhere in the government.

Some factors--such as the lack of demand for gambling enforcement and the existence of corruption in other segments of the community--which contribute to police gambling corruption lie outside the direct control of police. Police do, however, have control over departmental policies relating to gambling enforcement and to corruption. Unfortunately, this authority has not generally been used effectively to control gambling corruption. Police administrators have traditionally denied the existence of systematic corruption or, alternatively, have attributed it to a few "rotten apples" within the department. Efforts to prevent recurring corruption have generally taken the form of new procedures in gambling enforcement and new prohibitions on the activities of gambling enforcement officers. Police departments have often established unofficial gambling arrest quotas both to insure continuing enforcement activity and, based on the notion that officers will not accept payoffs from persons they arrest, to minimize corruption. The traditional use of arrest quotas is perhaps the clearest reflection of police departments' lack of serious commitment to gambling enforcement: Gambling arrests are made that meet the quota, thereby fulfilling the departmental requirement of continuing enforcement activity, although both police officers and administrators are well aware that these arrests will not result in significant sentences or have any significant impact on illegal gambling.

RECENT TRENDS IN GAMBLING ENFORCEMENT

Although the primary responsibility for gambling enforcement rests with local police departments, the role of State-level agencies is growing. This growth has occurred mainly as part of increased State-level efforts against organized crime that resulted from the work of legislative and other study commissions--many of them federally funded--during the late 1960's and early 1970's.

As of 1975, there were organized crime intelligence units in 20 States, and 23 States had organized crime investigative-prosecutorial units modeled after the U. S. Department of Justice's Strike Forces.

Gambling enforcement involves the use of techniques that enable police to detect largely unreported violations and to identify and gather evidence against violators who may be insulated by several layers of low-level employees. For uniformed officers, the most frequent source of gambling arrests is the direct observation of illegal gambling activity, but such arrests tend to reach only individual street players and lesser employees of gambling organizations. Arrests at higher levels--i.e., large bookmakers or numbers offices and banks--can rarely, if ever, be made in this manner. They require investigation leading to probable cause for search and arrest warrants; these investigations are the province of plainclothes officers who have traditionally used such techniques as physical surveillance, informant information, and undercover operations.

In recent years, additional tools have become more widely available for use in gambling enforcement. The most important of these is electronic surveillance, authorized by Congress in 1968 under Title III of the Omnibus Crime Control and Safe Streets Act. Electronic surveillance is particularly well-suited for use in gambling investigations because gambling operations are so dependent on telephones. From 1969 (the first full year for which figures are available) to 1975, the number of electronic surveillance orders by the States increased from 79 to 339. During that 7-year period, gambling accounted for approximately 50 percent of all electronic surveillance orders. By the end of 1975, electronic surveillance was authorized in 23 States and the District of Columbia.

In recent years, more and more States have enacted legislation aimed at syndicated or commercial gambling. As of January 1975, syndicated gambling statutes had been enacted in 20 States. While statutory definitions vary, the general intent of these laws is to differentiate between syndicated gambling operations, and casual social gambling among individuals, and to provide severe penalties for persons involved in the former. Despite the more severe sentencing provisions of syndicated gambling statutes, judges continue to give minimal sentences in gambling cases. Thus, the anticipated effectiveness of severe sentences has not materialized.

Since 1968, five States have established statewide grand juries which, with jurisdiction unrestricted by local boundaries and with the authority to subpena witnesses and grant immunity, can be an important investigative tool in gambling enforcement. Immunity statutes provide another useful antigambling tool. Statutes in 39 States authorize the use of immunity in gambling cases. It is not known precisely to what extent immunity is used in gambling cases. It is, however, exceedingly difficult for witness immunity to be an effective tool where there is no incentive for a witness to cooperate. This is particularly true with low-level gambling operators or employees who may reasonably expect to be sentenced only to a small fine and/or probation. The sentences provided for by syndicated gambling statutes might be expected to help convince higher level persons to testify against their colleagues; however, since the higher maximums appear to have little effect on sentencing practices, this incentive exists in theory only.

There is reason to believe that the ineffective corruption control measures of the past are giving way to more sophisticated efforts. The 1970's have seen a greater willingness on the part of police officials to deal realistically with the presence and extent of police corruption. Attempts by police administrators to combat gambling corruption have become less reactive and superficial and more preventive and basic. Many departments have created internal affairs units with responsibility for investigating alleged misconduct and, more recently, for identifying areas with a potential for corruption and developing means for reducing that potential. Restructuring of antigambling personnel, frequently involving the establishment of units assigned strictly to gambling enforcement, is replacing the transfer of personnel from one gambling unit to another. In several departments, a limit has been placed on the length of time officers may be assigned to these units.

An additional development during the 1970's has been an increasing emphasis on education and professionalism in law enforcement, which might be expected ultimately to have an impact on corruption.

CONCLUSIONS AND RECOMMENDATIONS

State Gambling Policy

Gambling enforcement has long been characterized by ineffectiveness, inefficiency, and corruption. In light of the inconsistencies of gambling policies and the lack of legislative support for the gambling enforcement task, this failure ~~is not~~ surprising. Indeed, it would be surprising if the enforcement of gambling prohibitions succeeded under present conditions.

Throughout the Nation, gambling is at the same time prohibited and encouraged. Several States have for many years permitted betting at racetracks; and, more recently, off-track betting has become legal in some jurisdictions. Yet, taking bets on horses anywhere except at a track or at an official off-track location is subject to criminal prosecution. Outside of Nevada and Montana, sports bookmaking is illegal. Nevertheless, the publication of betting lines in newspapers and the discussion of odds on television--information of use principally to bettors and bookmakers--continues. Charitable organizations are widely exempted from gambling prohibitions in order that they may sponsor raffles or bingo; similar endeavors of a commercial nature are prohibited. State-run lotteries and numbers games have been instituted, but these same forms of gambling are prohibited if privately run.

The existence of gambling that is sanctioned, licensed, or run by the various States--and the attendant publicity--promote peoples' interest in gambling and increase their desire to gamble. Policies that help to create a public demand for gambling coexist with policies that prohibit the supplying of services to meet that demand. The response of many citizens to the contradictions and hypocrisy in State gambling policies is to ignore the laws prohibiting gambling. Policymakers, however, apparently see no connection between their decisions and the existence of the illegal gambling market.

While State legislators have been quick to prohibit certain forms of gambling, they have generally been less willing to provide the tools necessary to enforce such prohibitions. As a result, law enforcement agencies are faced with an impossible task. In many jurisdictions, the deterrent effect of antigambling laws is weakened by the fact that the illegality of gambling is restricted to persons who take bets; those who make bets are not violating the law in doing so. A majority of States have failed to authorize electronic surveillance--a tool widely accepted as necessary to enforce gambling laws effectively. Similarly, only a few States have instituted investigative grand juries with either statewide or local jurisdiction.

The lack of commitment to enforcement of gambling prohibitions is also reflected in the level of resources devoted to that purpose. Legislative bodies are increasingly reluctant to expand criminal justice appropriations in general; but even in past years when budget increases were more available to criminal justice agencies, little, if any, effort was made to provide the resources required for a serious gambling enforcement effort. Legislators appear to have considered their task complete upon enactment of antigambling laws, without considering that successful enforcement would likely require additional police, prosecutors, and judges.

A number of States have provided for increased penalties for convicted gambling offenders. However, this appears to have been done without consideration of relevant questions: If judges have rarely made use of the lower maximum sentences previously available to them, are they likely to sentence gambling offenders more severely now? If so, will this result in a greater number of trials necessitating additional prosecutors, judges, and courtrooms? If sentences do increase in severity, can any significant number of gambling offenders be housed in existing jails, or will new ones be needed?

State gambling policies have evolved in a patchwork manner, without unifying goals. Legislatures have enacted gambling prohibitions and exceptions to these prohibitions with little apparent concern for the consequences. Most of the recent official attention given to gambling has centered around the question of whether or not to legalize various games. It is clear that equal attention must be given to the role of gambling prohibitions. A continuation of the existing "nonpolicies" can only mean the continuation of contradictions, hypocrisy, and enforcement problems. States must decide what course to pursue regarding gambling--prohibition or legalization. In addition, consideration of policy alternatives must take into account the goals of each alternative as well as the available and necessary strategies for achieving those goals. A decision to prohibit gambling is meaningless unless it is backed by strategies that support enforcement of that prohibition: a complete prohibition with no exceptions; the prosecution of bettors as well as operators, with jail sentences--possibly mandatory--for both; substantially increased priority for gambling enforcement in relation to crimes of violence and property crimes; and substantially increased resources devoted to gambling enforcement. At the same time, the potential effects of such strategies must be considered.

While State legislators bear most of the responsibility for the current lack of consistent gambling policies, criminal justice agencies must assume their share of the blame. Police, prosecutors, and judges alike have been ostrichlike in their failure to communicate with each other or with State legislatures concerning the problems of enforcing gambling prohibitions. The prevailing attitude seems to be that each criminal justice agency can perform its function while remaining oblivious to what occurs in the rest of the system, and that it is inappropriate to "interfere" in the legislative process.

The Commission believes the contrary to be true. The policy decisions of criminal justice agencies that affect gambling enforcement must be made cooperatively. Further, criminal justice officials have a responsibility to make their views known to legislative bodies, and this responsibility must be met in the area of gambling policy.

In the absence of legislative policy changes that either remove gambling prohibitions or provide sufficient support for their enforcement, the Commission believes that changes--some legislative, some directed at agency policies and procedures--can be made that will substantially lessen the current problems of gambling enforcement.

Not every jurisdiction requires the same degree of change. In many parts of the country, the level of illegal gambling appears to be moderate, relatively discreet in its operation, and unconnected with either systematic violence or significant corruption. Although no jurisdiction should consider itself immune from such problems, the recommendations that follow do vary in their applicability.

States and local jurisdictions must assess the degree to which gambling enforcement problems exist. The nature and amount of illegal gambling and its connection with other kinds of crime, the effectiveness and efficiency of the current enforcement effort, and the existence of or potential for corruption must all be considered. The current gambling enforcement effort must be evaluated to determine whether or not it is accomplishing the several goals of gambling enforcement: organized crime control; minimization of corruption; preservation of a public image of integrity for police departments; maintenance of public order; and proper use of resources.

Police and Prosecutors

The Commission recommends that the primary authority for gambling enforcement be transferred to State law enforcement agencies. Where illegal gambling exists on a large scale and is a continuing source of corruption, the effort to combat it must be centralized and specialized in order to be effective. The mounting of such an effort in each local police department within a State or metropolitan area is an inefficient use of resources.

The fact that many, if not most, illegal gambling operations cross intrastate jurisdictional lines has often been a hindrance to local police. Concentrating the gambling enforcement effort at the State level eliminates this hindrance.

The transfer of authority to State government may also lessen gambling enforcement corruption since agencies at this level would be less accessible to gamblers wanting to make payoffs. It should also be noted that gambling rackets have repeatedly been found to be connected with local political machines. Removal of major gambling enforcement from the municipal level would substantially weaken political control of enforcement authorities. In some jurisdictions it may be appropriate to transfer gambling enforcement responsibility for a major metropolitan area to a county-level agency.

Where the major gambling enforcement responsibility remains with local police departments, specialization is desirable. Responsibility spread among all patrol officers or all vice squad members weakens the gambling enforcement effort. Patrol officers, because of their uniform and their regular duties, can make only low-level gambling arrests. Assigning vice officers multiple responsibilities decreases the likelihood that the necessary expertise and sophistication in gambling enforcement will be developed. Therefore, for those police departments of sufficient size to support structural specialization, the Commission recommends the establishment of a specialized gambling enforcement unit. In departments where such a unit is not feasible, the Commission recommends that one or more officers be given the assignment of directing the gambling enforcement effort.

Whether the enforcement effort against major gambling violators is concentrated at the level of State, county, or local police departments, enforcement against nonserious gambling violators remains the responsibility of local police. The status of enforcement aimed at low-level offenders is of particular concern to the Commission. Arrests of nonserious gambling violators have for too long constituted the major portion of the gambling enforcement effort, despite the fact that such arrests cannot make any significant contribution to organized crime control. The proper--and achievable--objectives of enforcement against low-level gambling violators are minimization of corruption, preservation of a public image of integrity for police departments, maintenance of public order, and the proper use of criminal justice resources. The Commission recommends that enforcement against social gambling in public places and against public activity by low-level employees of gambling organizations be aimed at accomplishing these objectives, with the major enforcement effort to be directed at large-scale organized gambling.

The Commission has considered recommending the issuance of low-collateral citations for public social gambling, thereby eliminating the waste of resources entailed in the current formal processing of these offenders without changing the nature of the penalty ultimately assessed. Use of citations for crimes that do not have plaintiffs is not a new concept; a number of States have instituted such a system for marijuana consumption offenses.

Ultimately the Commission has had to reject this approach, having been persuaded that voluntary compliance with this scheme would be extremely low, both promoting disrespect for the law and requiring substantial followup effort to enforce payment.

The major reason for continuing the criminal status of social gambling in public settings is the belief that such gambling is likely to lead to disturbances of the public order. However, the laws prohibiting public social gambling account for a major proportion of gambling arrests of blacks, making it apparent that such laws are discriminatory in effect, though not in intent. The Commission believes that serious consideration should be given to removing the statutory prohibitions against public social gambling.

Numbers writing or other activity by low-level employees of gambling organizations occurring in public places is a somewhat different matter. Although the Commission has recommended that the major investigative responsibility be vested in a particular agency or unit, the patrolling police officer still has the responsibility to take action where he observes an open gambling violation. Such offenses should continue to be processed as minor criminal offenses.

Enforcement directed at low-level gambling employees and persons engaging in social gambling in public places must be sufficient to meet the public's expectation that obvious violations of the law will be dealt with and to discourage illegal gambling operations from open promotion. Police department policies that result in the wholesale arrest of such offenders should be avoided; inundating prosecutors and courts with these cases is a misuse of resources and has no impact on illegal gambling. Gambling arrest quotas, official or informal, should not be established; at the same time, policies such as requiring elaborate paperwork that discourage officers from making gambling arrests should not be established.

The role of prosecutors in gambling enforcement is an important one. The apparent reluctance of prosecutors' offices to take gambling cases seriously has been a source of discouragement to police and a factor in the ineffectiveness of gambling enforcement.

The basis for prosecutorial attitudes is not hard to find. Gambling cases can be long and technical; in many offices, the expertise to try these cases competently is lacking. A continual flow of low-level gambling cases from police has tended to overshadow cases involving serious gambling offenders. In addition, the prosecutor, like the police officer, must be discouraged by the very light sentences given to convicted gambling offenders.

The Commission's recommendations to police agencies should insure that prosecutors receive a greater proportion of serious gambling cases and a lesser number of low-level ones. While this alone will provide an incentive to prosecutors to treat major gambling cases seriously, a more direct role by prosecutorial agencies may be needed. In those jurisdictions having a major gambling enforcement problem, the Commission recommends that prosecutors specify to police (i.e., the State, county, or local agency having primary gambling enforcement authority) the elements required for a gambling case to receive a serious prosecutorial effort; consult with and advise police during the investigative phase of major gambling cases; and assign an appropriate number of assistant prosecutors to screen and try gambling cases. Alternatively, the Commission recommends that such jurisdictions establish combined investigative-prosecutorial gambling enforcement units.

Electronic Surveillance

The basis of enforcement against major gambling operations, particularly bookmaking, must be electronic surveillance. Without this tool, it appears that law enforcement efforts will never reach beyond the lower levels of operation such as the numbers writer and the bookie's telephone clerk.

This is apparent for three reasons: the heavy and unavoidable reliance of the bookmaking profession on telephones for routine transactions; the lack of witnesses who might provide independent evidence; and the fact that wiretap authority becomes essential when, because the lower level arrestees see themselves running small risk of incarceration, they will provide little information to aid in the conviction of major operatives.

For these reasons, in those States that permit it, electronic surveillance has been used primarily for gambling cases. In all, 50 percent of non-Federal orders for electronic surveillance have been for gambling cases. It is impossible to provide any detailed evaluation of the effectiveness of State use of this tool. However, material which has been provided to the Commission supports the notion that wiretapping in gambling cases does not lead to substantial diminution of the availability of illegal gambling; however, it does provide local enforcement agencies with a moderately productive means of effectively raising the operating cost for major gambling operations by helping to obtain heavy fines or even jail sentences for high-level members of these operations. The Commission therefore recommends the continued use of electronic surveillance in gambling cases. In those States having a substantial amount of illegal gambling where electronic surveillance is not now authorized, the Commission recommends the passage of legislation authorizing the use of electronic surveillance.

Sentencing

In almost every State in the Nation, convicted gambling offenders are subject to either moderate fines or sentences of probation. Only in New Jersey does the convicted gambler face a serious threat of significant periods of incarceration. The result is that, outside of New Jersey, the police lose one of their major tools for enforcement--the threat of a substantial penalty.

The Commission is aware that there is widespread disagreement as to the seriousness of gambling violations per se. In a system where convicted muggers often receive sentences averaging no more than a few months in jail, it is difficult to exhort judges to subject indiscriminately all convicted gambling operators to lengthy sentences.

Nonetheless, it should be noted that a strong majority of the citizens surveyed by the Commission did agree that gambling violators should be jailed. In many cities, there is widespread support for the notion that organized crime poses a serious threat and that illegal gambling is an important part of its activity. Judges who decide to impose substantial sentences on major gambling violators will find strong support for their actions.

It is clear that many judges fear that imposition of heavy sentences in routine gambling cases exposes them to the risk of many protracted trials. It should be noted that in New Jersey, where judges have followed such a sentencing policy for the past decade, excessive crowding of the court calendar does not appear to be a problem. Moreover, what the Commission is recommending to police and prosecutors is likely to lead to the presentation of fewer and more serious gambling cases in court.

It appears that the information available to judges in the sentencing of gambling offenders is often inadequate. Presentence reports are not routinely requested and prosecutors often fail to present information concerning a defendant's organized crime connections. If major gambling offenders are to receive serious sentences, courts must have sufficient information at the time of sentencing to determine the appropriate penalty. The Commission therefore recommends an increased use of presentence reports in gambling cases. The sentence should take into account both the prior record of the offender and any evidence presented at the sentencing hearing that concerns organized crime activities. Where it can be shown that the offender is a major gambling figure or is involved in organized crime, a sentence of at least one year in prison together with a fine of $1,000 or more should be given. For lesser offenders, a substantial fine alone is appropriate.

CHAPTER 4. GAMBLING IN THE UNITED STATES

As part of its statutory mandate to undertake a comprehensive legal and factual study of gambling in the United States, the National Gambling Commission in February 1975 asked the University of Michigan Survey Research Center to conduct a detailed survey of American gambling practices and attitudes. The results of that survey have recently been made available to the Commission. The survey contains a wide range of information about the people who gamble--the games they prefer, their exposure to and experience with various types of gambling, their attitudes toward legalization, and much more. It also includes data on the amount of gambling that occurs both legally and illegally, and on the revenue potential of legal gambling.

Survey Research personnel conducted more than 1,700 interviews during the summer of 1975 (see Table 1). Each interview lasted about one and a half hours and consisted of detailed questioning about the respondent's gambling activity during 1974, as well as his or her early gambling experiences. From the extensive data recorded on computer tape, research personnel prepared a detailed, analytical report more than 500 pages long.

The Commission is currently in the process of evaluating the survey findings. Preliminary analysis indicates that the survey procedure was sound and that the vast majority of the survey findings are reliable. However, as a result of a public hearing and consultation with various law enforcement and research experts, the Commission has determined that some additional study is needed with respect to certain areas of the survey where results appear incomplete or inconclusive.

The material that follows summarizes the survey findings as they were presented to the Commission, indicating those few areas that the Commission believes require further study.

Following are highlights of the gambling survey findings.

Profile of American Gamblers. Fully 61 percent of the adult population--about 88 million people--participated in some form of gambling in 1974. Among these people were about 19 million who wagered only with friends in a social setting, leaving about 69 million people--or 48 percent of the adult population--who patronized some form of legal or illegal commercial gambling. Only 11 percent of the adult population --about 16 million people--gambled illegally in 1974, and the overwhelming majority of those who wagered illegally also patronized one or more of the legal games.

Although gambling participation is widespread, clear patterns exist on the basis of geographic region, sex, race, income, education, and other demographic factors. Eighty percent of the people living in Northeastern States bet in 1974, compared to only 40 percent of those living in Southern States. Slightly more males bet than females, and more whites than nonwhites. There was less wagering among people in the lower income categories than among middle and upper income people.

Participation also rose with education. Quite a different picture emerged, however, from an examination of illegal gamblers only. There were far fewer women proportionately among the illegal gamblers; and nonwhites, rather than whites, were the most frequent participants. Regional differences also were more pronounced; illegal gambling was three times more prevalent in the Northeast than in the South.

Economics of Gambling. Approximately $24 billion was wagered during 1974--$5 billion of it illegally (Table 2). This estimate of the volume of illegal gambling is considerably lower than the $40 billion estimate provided by the Justice Department, and it is only 1 percent of the $500 billion figure suggested by gambling expert John Scarne.

The Commission is currently reviewing the $5 billion illegal gambling figure. While the data were gathered and analyzed in more systematic fashion than any used in previous estimates, the basic approach of the project, using citizen interviews, may have led to underestimation of the total volume. For example, the response rate in central cities was only about 51 percent, compared to about 75 percent for the survey as a whole. This low response rate in the 12 largest central cities is a problem that confronts all survey and census takers. In this particular case, it may have led to an inaccurate picture of the amount of numbers playing that occurs, since most numbers operations are found in urban environments. In addition, some critics have asserted that among the nonrespondents in middle and high income groups may have been some particularly heavy gamblers who would not trust survey takers to keep information confidential. Others have suggested that many heavy gamblers are completely unaware of the total amount of money they wager but know only how much they have won or lost during a given period. Still another explanation for the discrepancy between the survey's findings and other estimates--particularly that provided by the Justice Department--is that the survey figures do not include any layoff action--money a bookmaker bets with other bookmakers in order to balance his accounts.

The amount of money not returned to players is called the takeout. This takeout constitutes the total amount of money lost by gamblers as a group. In 1974, total legal and illegal gambling losses amounted to about $4.4 billion, the same amount spent by consumers that year on cigarettes and tobacco or on newspapers and magazines.

Survey results show that people in the lower income brackets tend to wager a greater percentage of their income than people in the higher income brackets. This makes gambling a regressive type of expenditure; if viewed as a source of tax revenues, the regressivity of gambling taxes would be comparable to that of the average sales tax. An example of a nonregressive, or progressive, tax is the tax on income--people in the higher income brackets pay a higher percentage of their income in taxes than those in the lower categories. Casinos are one of the few forms of gambling that are not regressive. The high cost of travel to and from areas where casinos are legal precludes widespread participation by low income people.

The desire to generate revenue for hard-pressed State governments has been the prime motivation for the legalization of most forms of gambling. Accordingly, an effort was made to estimate the amount of money that States could expect to raise if all forms of gambling were legalized throughout the Nation. The data show that the States could expect to raise about $9 billion a year through gambling taxation. This compares to about $1.2 billion that is currently realized. Because some forms of gambling have much higher administrative costs and payout rates than others, some of the most popular types of gambling might be less profitable to the State than games that are less popular but cheaper to operate. Although casinos might be expected to generate the second highest handle, they would not constitute a large source of government revenue if operated like those in Nevada.

Gambling in Nevada. The gambling experience in Nevada is unique. Because Nevada is the only State in which all forms of gambling (except lotteries) are legal, data were compiled on Nevada residents separately and then compared to the national sample findings. Compared to the Nation as a whole, more Nevadans gamble, gamble more frequently, and spend more on gambling. Twenty-seven percent of Nevada residents went to a casino in 1974, compared to only 9 percent of the general population. The average annual wager at casinos was $846 for Nevada residents--almost twice the amount ($448) wagered by nonresidents. These findings suggest that accessibility is a significant--indeed, perhaps the most important--factor in influencing gambling participation rates and the volume of wagering.

Inside Nevada, casinos are a regressive form of gambling. Because there are no travel costs involved, casinos are readily accessible to Nevadans in all income groups. Consequently, participation among low income Nevada residents is much higher than among low income nonresidents.

Survey findings in Nevada also indicate that the widespread availability of many forms of legal gambling causes people to lose interest in the illegal varieties. Only 4.3 percent of Nevadans gambled illegally in 1974, compared to 11 percent for the Nation as a whole. The amounts wagered illegally by individual bettors in Nevada also were substantially lower than for nonresidents. As in other small and midsized Western cities, numbers games are virtually nonexistent in Nevada's cities.

Gambling and Morality. Although moral considerations are an important constraint on gambling behavior, they are not so significant an influence as mere disinterest in play. Forty-eight percent of the nongamblers interviewed said they refrained from gambling because they think it is "wrong" or "sinful," but even more nongambling respondents said they were just "not interested," "have other things to do," or "don't know about it." Monetary concerns also were mentioned more often than moral concerns. Of the major American religious bodies, only the Baptist Church teaches that gambling is inherently sinful. This is one significant reason why gambling participation is so much lower in the South, where the Baptist faith predominates. Other churches merely teach that gambling in excess is wrong or take no position at all.

Why People Gamble. Most people gamble to have a good time, or for excitement and challenge. Money-oriented inducements for playing were cited less often, and, in general, the less exciting a particular game was rated, the more important the chance to make money became.

Of all forms of gambling--legal and illegal--horseracing at the track was rated as the most exciting, followed by cards with friends, casinos, and slot machines. Illegal horse and sports betting with bookies and numbers were rated as the three least exciting games. These findings suggest that excitement is derived from the amount of personal involvement in an activity rather than from the amounts of money likely to be won or lost. Neither track betting nor social cardplaying is a particularly high-stakes game, yet both are considered to be very exciting.

Gambling and Corruption. As previous surveys have consistently demonstrated, gambling and corruption often are linked in the public mind. The survey reinforced these findings. High school sporting events were seen by the public to be the least corrupt type of activity on which gambling takes place, falling midway between "almost never fixed" and "never fixed." Other games perceived as being primarily honest were charitable and State-run gambling, and other sporting events. The games perceived as being the least honest were horseraces and dograces, slot machines, casinos, and--at the bottom of the scale--numbers, which respondents believe are fixed "pretty often." A majority of nongamblers felt that legalization would increase the incidence of fixing. Gamblers, on the other hand, thought that some games, such as numbers, could be cleaned up through legalization, while others, such as sports events, would be tarnished.

Attitudes Toward Legalization. Although 80 percent of the respondents said they favored legalization of some form of gambling, no form of gambling received majority support for legalization in a State where it was not already legal. Once a particular form of gambling has been legalized, however, there is overwhelming support for its continued operation. Support for legalization also was much more substantial among bettors than among nonbettors.

Gambling participation increased steadily as the number of legal games available increased. Participation in illegal gambling also was significantly greater in States where at least three types of gambling were legal compared to States where no form of gambling is legal. This finding suggests that, rather than driving illegal gamblers out of business, partial legalization creates a climate favorable to the illegal forms.

Compulsive Gambling. Approximately 0.77 percent of the adult population--1.1 million people--can be classified as probable compulsive gamblers, and an additional 2.33 percent--3.3 million--can be considered "potential" compulsive gamblers. In Nevada, the incidence of compulsive gambling appears to be significantly higher. On the basis of interviews with 296 Nevada residents, it was projected that 2.62 percent of the Nevada population could be classified as probable compulsive gamblers and an additional 2.35 percent as potential compulsive gamblers. In Nevada, as in the national sample, the incidence of compulsive gambling among men was much higher than among women. The findings suggest that the widespread legalization of gambling increases the incidence of compulsive gambling. Additional research is needed before the findings on compulsive gambling, both nationwide and in Nevada, can be considered conclusive.

The Individual Games. The remainder of this summary highlights the preliminary survey findings regarding seven forms of gambling: betting on horses, off-track betting, lotteries, sports betting, bingo, casinos, and numbers.

1. Betting on horses. Betting on horses (at the track, with bookies, and with OTB) accounted for 46 percent of all wagering during 1974. More money was wagered on horses than any other form of gambling, and the average annual wager per bettor was higher than that on most other games. In States where horseracing is conducted, there is a higher incidence of betting with illegal bookies than in States where there are no tracks.

2. Off-track betting. A substantial majority of OTB patrons go to the track; they also go more often and bet more heavily than track attendees nationwide. The survey results do not support the hypothesis that OTB in New York City discourages track attendance. But until more information becomes available, no firm conclusions can be drawn regarding the effect of OTB on track attendance and handle in New York. The existence of OTB appears to have created an estimated 90,000 new customers for illegal bookies--all people who had never bet with bookies prior to the introduction of OTB. Eighty-eight percent of people currently betting with bookies said they would use OTB exclusively if certain desirable features were added--principally tax-free winnings and payoffs comparable to those of the illegal books.

3. Lotteries. Forty-eight percent of the residents of lottery States bought tickets in 1974, spending an average of $25 each that year. Whites and suburbanites were the most frequent lottery participants. The introduction of a State lottery appears to increase numbers playing, rather than to decrease it as is often predicted. Because players invest so little time, money and emotional involvement in the game, they do not view the legalization of lotteries as a threat to the community. Lotteries are generally considered to be run honestly. The current State-operated lottery model is the preferred one, and there was little support for either national or local lotteries.

4. Sports betting. More than 4 million people wagered about $2.5 billion on sports events in 1974, either with sports bookmakers or on multiple game sports cards. Most of this money--about $2.3 billion--was wagered illegally with bookies. About a third of the respondents favored legalization of commercial betting on sports events in general, but only 16 percent favored legalized betting on high school sports. The majority of respondents thought that legalized sports betting would increase the danger of corruption of sports events.

5. Bingo. Nineteen percent of the population played bingo in 1974, spending about $1.74 billion, or an average of $74 each. The few people who played once a week or more (8 percent of all players) accounted for much more than their proportionate share of total bingo expenditures. This group is composed of elderly women, the widowed, and low income people. Younger and upper income groups were well represented among the vast majority of players--those who played once a month or less.

6. Casinos. Almost 10 percent of the population (13.4 million) visited a Nevada casino in 1974. More than any other type of gambling covered in the survey, casino gambling is influenced by the degree to which it is accessible. Thirty-one percent of the people living in the West visited a casino in 1974, compared to 9.3 percent in the Northeast. Casino bettors view this form of gambling primarily as a form of recreation, rather than as a money-making endeavor.

7. Numbers. The greatest proportion of numbers players lives in Northeastern cities. The numbers handle in 1974--$1.1 billion--was less than half the illegal sports bookie handle but nearly twice the amount bet on State lotteries that year. The average numbers player placed bets about 71 times in 1974, spending about $273. Despite numbers' reputation for dishonesty, most players were confident that they would be paid if they won. About a fifth of all numbers players said they would continue to play the illegal game even if a legal counterpart were available.

TABLE 1

SURVEY DEMOGRAPHICS

	Number of Interviewees (Unweighted)	Project Data (Weighted) %	Census Bureau Data %
Age			
18-24 years	250	13.9	18.5
25-44 years	738	42.5	36.4
45-64 years	524	31.4	30.0
65 or over	222	12.2	15.1
	1734	100.0	100.0
Sex			
Male	1144	46.3	47.6
Female	588	53.7	52.4
	1732	100.0	100.0
Race			
White	1327	84.8	88.5
Other	374	13.1	11.5
Not ascertained	35	2.1	--
	1736	100.0	100.0
Region			
West	335	17.8	17.1
North central	525	28.1	27.5
Northeast	468	23.1	24.7
South	408	31.0	30.7
	1736	100.0	100.0

TABLE 2

HANDLE FOR U.S. COMMERCIAL GAMBLING 1974

	(in thousand $) Estimate Derived From		Survey Percent
	Sample	Published Data	Over/Under
Legal			
Horses at track	7,930,000	7,512,000	+ 5.2
OTB, New York	967,000	814,000	+15.8
Legal Casinos	6,076,000	6,693,000	-10.1
Bingo	1,735,000	1,672,000	+ 3.6
Lotteries	639,000	681,000	- 6.6
Total Legal	17,347,000	17,372,000	- 0.1
Illegal			
Sports Books	2,341,000		
Horse Books	1,368,000		
Numbers	1,064,000		
Sports Cards	191,000		
Casino Games	110,000		
Total Illegal	5,074,000		
Total Legal and Illegal	22,421,000		

CHAPTER 5. LEGAL GAMBLING INDUSTRIES

The sections that follow examine the legal gambling industries in the United States today: Casinos, parimutuel wagering, lotteries, bingo, and off-track parimutuel wagering.

Each of these sections sets forth the situation regarding each form of legalized gambling as it presently exists and discusses the implications of legalization as well as the Commission's current recommendations.

CASINOS

BACKGROUND

In the continental United States, casino gambling is legal only in Nevada.* That State has had a 45-year monopoly on an industry that is variously deplored, admired, and envied. Rumor, innuendo, and exaggeration have combined to create a folklore of Nevada gambling that is based as much on conjecture and assumption as it is on historical fact and current reality. Much of the speculation has centered on such allegations as ties between the casinos and members of organized crime, profit skimming by casinos to avoid taxation, the link between gambling and crime rates in Nevada, the profitability of casinos, and the effectiveness of State regulation.

In recent years, a number of States have taken an increased interest in Nevada's brand of casino gambling. Some gambling proponents see casinos as the answer to their State's revenue problems, particularly in view of Nevada's fiscal soundness. Others merely see no valid moral, social, or economic reasons why other States should not follow Nevada's example. Opponents of casino gambling point to the alleged ties to the underworld and the higher crime rates in Nevada's principal gambling cities as reason enough to prevent the spread of the casino gambling phenomenon.

Preliminary results of the National Gambling Commission survey of American gambling behavior and attitudes indicate that 27 percent of the adult population had gambled at a casino sometime in their lives. Ten percent of those surveyed said they had gambled at a casino in 1974, which translates to a projected figure of 14 million people nationwide who gambled at a casino--legal or illegal--that year. The majority gambled in Nevada; about a third went to casinos outside the United States.

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*The Commonwealth of Puerto Rico is the only American jurisdiction outside the State of Nevada where legal casino gambling is operated.

Through its hearings and independent research, the National Gambling Commission has reached a number of conclusions about casino gambling that run contrary to many of the traditional viewpoints:

1. Although organized crime once was a significant factor in some Nevada casinos, its influence has declined significantly.

2. Stringent accounting regulations and sound internal control mechanisms effectively prevent virtually all skimming of casino profits by owners. Small-scale theft by casino employees and customers does occur.

3. Nevada's gambling cannot be held solely, or even primarily, responsible for the higher-than-average crime rates in Reno and Las Vegas. Gambling is only one of many factors that affect crime rates in these cities, as it does in other cities of comparable population.

4. While successful casinos provide a high rate of return on investment, many are only marginally profitable, and a few operate at a loss.

5. Although gambling taxes and fees constitute a significant percentage of Nevada's State income, both New York and California earn more from taxes on parimutuel wagering alone than Nevada collects through assessments on casinos. In terms of total State revenue from all forms of gambling (including lotteries), Nevada ranks only fifth among the States with gambling revenues.

6. It has taken Nevada many years to develop and refine its system of casino regulation, a process that is still ongoing. On the whole, State regulations are sufficiertly stringent and enforcement is effective.

CONSEQUENCES AND RECOMMENDATIONS

The Commission does not believe that the States should expect legalized casino gambling to ease their financial difficulties significantly. Although casinos may generate enough revenue to help meet the needs of a State of Nevada's population, they are not capable of providing the resources necessary to support the costs of public services in heavily urbanized States. Compared to the costs of government, the contribution which could be made by taxing or operating casinos in such States would be trivial.

Casinos are looked upon also as a means of stimulating tourism in resort areas. However, the possible benefits that could accrue to local economies--assuming that the huge capital outlays necessary to construct casinos and attendant facilities that are competitive with Nevada's could be secured and that competition among resort areas would not fragment the available market--might well be offset by social costs to the surrounding communities. The Commission's gambling survey indicates that Nevada's residents participate in commercial gambling activities to a much higher degree than elsewhere in the Nation, and that a substantially higher proportion of the Nevada population are problem gamblers. Although Nevada--because of its relatively small and homogeneous population--may be able to cope with these effects, they might be expected to cause much greater difficulty in densely populated areas, especially in light of the fact that casino gambling is relatively regressive for Nevada residents; i.e., rates of gambling participation among, and expenditures on gambling by, those earning less than $5,000 per year is now much higher in Nevada than in the rest of the country. Thus, if casinos were legalized in heavily urban areas, participation by lower income individuals can be expected to result in social problems and an expanded need for government services, thereby offsetting in part any advantages derived from the stimulation of local businesses.

For these reasons, the Commission recommends that if any further legalization of casino gambling is to take place in this country, it should be restricted by the States to relatively isolated areas where the impact on surrounding populations can be minimized. Although the Commission realizes that such a principle might not appeal to State policymakers who wish to stimulate existing resort areas, it nonetheless believes that the likely social effects of legalized gambling might outweigh purely economic considerations.

Another factor to be considered is the possible impact of casino gambling on existing industries--not only on other forms of amusement and recreation, but on those forms of gambling which have been legalized for the purpose of raising State revenues. Would casino gambling reduce the handle at parimutuel racetracks or the sales of State lottery tickets? Or would the climate of further legalization stimulate these activities? Local market conditions play a major part in such developments and merit careful examination.

Should a State decide to legalize casinos, the Commission believes that private enterprise is the best vehicle for insuring that they are effectively maintained. For a State to take on the direct responsibility for operating and promoting casino gambling would raise substantial practical difficulties, and would invite the possibility of direct government involvement in any gambling-related scandals that might arise.

Because scrupulously controlled private enterprise has proven successful in Nevada, the Commission commends that basic framework to any State wishing to legalize casinos. Although serious questions arise as to whether a State that relies so heavily on a single industry for its revenue needs is truly capable of regulating that industry properly, the Nevada control structures have been tested by time and by often bitter experience, and the State's Gaming Policy Committee, Gaming Commission, and Gaming Control Board all operate effectively and commend themselves as models to other States. The licensing procedure, including requirements of background investigation and full disclosure of ownership interests, are properly strict and thorough, and the statutory framework has been augmented by a comprehensive scheme of regulations, which have been continuously modified to adapt to changing circumstances.

In advising other States, however, the Commission now directs its attention to those areas of casino regulation in Nevada that may be unique to that State and not feasible elsewhere. Although the regulations providing for the licensing and control of casinos in Nevada have proven themselves to be capable of protecting the interest of that State in promoting secure and profitable casino gambling, other States considering the legalization of casinos might wish to address the issue of player-protection regulations--an issue which is not covered in Nevada's regulations. Specifically, Nevada makes no provision for setting odds, rates of payouts, minimum and maximum betting limits, hours of casino operation, and other factors directly relating to the impact of a casino on the people it is designed to attract. Casino operators in Nevada feel that the competition that exists between their operations adequately protects all of these factors. However, in advising all other States, the Commission believes that if a State is going to permit casino gambling to be conducted within its borders, for at least the partial purpose of raising State revenues, it has the responsibility to protect the interests of those whose gambling it sanctions and promotes, particularly in light of the Commission's survey data indicating that casinos foster participation among those who can least afford it.

In the Commonwealth of Puerto Rico, player protection is embodied in the enabling casino legislation. The Commission finds many of these provisions to be commendable; however, it believes that such restrictions should take the form of regulations rather than statutory provisions. Regulations having the same force as statutes have the advantage of being more easily amended should the need for change arise. State policy in such areas must be kept flexible and adaptable so that State officials can regulate the impact of casino gambling and respond to changes in market conditions. These regulations, like the present regulations in Nevada, would stand within a rigid statutory framework of control over gambling, such as that provided by Nevada's Gaming Control Act.

Accordingly, the Commission recommends that States which choose to legalize casino gambling should first turn for guidance to the legal framework established in Nevada. It then recommends that the additional statutes and regulations now being prepared by the Commission be considered.

In sum, for those States presently considering the legalization of casino gambling, the following consequences of such action should be considered:

- The revenues generated by casinos will not be sufficient to ease significantly the financial burdens of densely populated States.

- Gambling among the local population can be expected to increase, and lower income individuals will participate to a greater extent than at present.

- There is the possibility--although that is yet to be determined--that other existing forms of legalized gambling, such as racetracks and lotteries, will find their revenues decreased as a result of competition from the new source.

PARIMUTUEL WAGERING

BACKGROUND

Parimutuel wagering is conducted in one form or another in 32 States which contain approximately 80 percent of the Nation's population. Most parimutuel wagering takes place at horseraces; dogracing is the second most popular parimutuel event, while such wagering on jai alai is currently allowed in only four States. The total amount of money legally wagered on parimutuel racing in 1974 was approximately $8.9 billion, with the States receiving approximately $659 million of that amount.

The essence of the parimutuel system of betting is that the bettors wager against one another instead of against a bookmaker. Prior to the distribution of the betting pool to the winning players, approximately 15 to 17 percent of the total amount bet on the sporting event is deducted to cover State taxes and private costs and profits. In parimutuel wagering, the odds cannot be calculated in advance because too many betting entries and combinations are involved. The winning bettor does not discover his exact payoff until the conclusion of the event. If the bettor is one of only a few winners among many bettors, the payoff on his wager can be quite high.

Preliminary findings of the National Gambling Commission survey of American gambling behavior and attitudes indicate that 14 percent of the adult population--about 20 million people--bet on horseraces at the track in 1974. Four percent of the adult population--5.8 million people--bet on the dograces that year. Betting at tracks tended to increase as income and educational levels increased. As was the case with all forms of gambling, most respondents attached relatively little importance to adverse moral or social consequences of betting.

Judged by outward appearances, the racing industry is economically sound and its future appears bright. The number of racing dates, betting handle, per capita bets, and race track attendance are increasing each year. Jai alai is expanding beyond Florida to Nevada, Connecticut, and Rhode Island. But the state of the horseracing industry, despite its surface appearance, is not nearly so sound as that of dogracing and jai alai. In recent years horseracing has faced declining daily attendance rates and increasing State taxation and operating costs. Because of the increased number of racing dates, some trackowners have found themselves short of racehorses or in destructive competition with other tracks.

CONSEQUENCES AND RECOMMENDATIONS

Conflicts of Interest. In any sport in which gambling is permitted, it is important to avoid the appearance as well as the fact of wrongdoing. Hence, any situations in racing creating the potential for conflicts of interest should be carefully examined. In the course of structuring the necessary safeguards for clean racing, many activities that regularly occur without incidence of impropriety will nonetheless have to be eliminated by the States.

Therefore, the Commission recommends that members and staff of State racing commissions be absolutely prohibited from holding any financial interest in racetracks under their regulatory jurisdiction. This restriction should include financial interests in companies directly doing business with the tracks. These individuals should not be placed in a position where they could make decisions favoring their own interests.

In addition, the Commission recommends that members and staffs of State racing commissions be prohibited from placing parimutuel wagers at tracks within their States, as is now the case in several States. Nor should racing commissioners allow their horses to be raced in the State in which they hold office. The Commission believes that the appearance of a compromise of his independent judgment outweighs the commissioner's personal interest in seeing his horse run in his home State.

Betting by racing personnel on their own entries in a race appears to be a commonplace occurrence in the industry. Present State policies prevent jockeys from wagering against their own horses, and the Commission concurs with this approach. With few exceptions, State racing commissions do not restrict wagering by animal trainers. The Commission feels that no distinction should be drawn between the betting of jockeys and trainers, since both groups have the ability to influence the performance of their racing animal directly.

If the idea were not obviously impractical, the Commission would recommend a prohibition on wagering on any animal by anyone involved with racing, in order to avoid the appearance, and perhaps the fact, of inside information providing some bettors with an undue advantage. But, at the least, the Commission recommends that key racing officials --stewards, judges, and racing secretaries--be absolutely prohibited from betting on any entry.

The practice of horsemen betting on their own horses is as old as racing itself. Before the advent of organized horseracing, horseowners arranged competitions among themselves and bet on the outcome. The Commission finds no impropriety in betting by horsemen, so long as the owners refrain from betting on horses in competition with their own.

Disclosure of Economic Interests. Only a few States, Nevada and Illinois among them, require full disclosure of the hidden economic interests behind a nominal applicant for a license to run a racing meeting or gambling event. Past investigations have uncovered the potential problems that arise when a concessionnaire holds substantial economic interests that might affect trackowners' decisions. Recently, the Maryland Racing Commission, in response to a lengthy legislative inquiry, was unable to discover the true economic interests behind a Maryland track.

Like the securities industry, racing is a business that must deal carefully and properly with other people's money. The stock exchanges are federally controlled through the Securities and Exchange Commission, a major weapon of which is its ability to force financial disclosure from public corporations. The Government views this authority as necessary to protect the public interest in the maintenance of a fiduciary relationship between the public and controllers of corporations.

At this writing, Congress is considering a bill (H.R. 1048) that would force disclosure of ownership interests in the racing industry. The policy considerations of that bill are compatible with the Commission's viewpoint.

Nevertheless, the Commission feels that the States can accomplish the same purpose without Federal supervision. To this end, the Commission has developed model State regulations--adapted from elements of the proposed Federal bill--mandating thorough and accurate financial disclosure among all elements of the racing industry. Those regulations will appear in an appendix to the final report, to be issued this fall.

Because the Commission believes that hidden ownership in the racing industry is contrary to the public interest, it recommends that the States enact legislation requiring full disclosure of all financial interests in the operation of a racing meeting. If such legislation is not enacted by the States within two years, the Commission recommends that Congress enact a Federal disclosure law with these provisions.

Licensing and Background Information. In addition to requiring full disclosure of all parties holding financial interests in racing associations, the States also must determine which individuals connected with racing should be required to obtain licenses, and the extent to which those persons should be required to disclose information concerning their backgrounds.

Given the high interest in protecting the integrity of racing, it is essential that racing commissions have accurate information concerning the identity of all employees at the track, including the employees of concessionnaires. Anyone who works at a racetrack is close enough to the conduct of the sport to merit close scrutiny, and the racing commissions should possess information concerning any past conduct of those individuals that was contrary to the best interests of racing. Employee data should include date and place of birth, fingerprints, social security number, any outstanding civil judgments, any criminal convictions against the employee, and the record of involvement in any administrative proceedings concerning racing. The standards for banning individuals from the sport could vary depending upon the sensitivity of the position applied for. However, the NASRC should endeavor to promote consistent standards throughout the States. Such information would then be available to all racing associations in a State, as well as to racing associations in other States through the NASRIS computer network.

Accordingly, the Commission recommends that the States require all employees at the track, regardless of job classification, to obtain licenses and reveal background information pertinent to their close connection to racing. The cost of obtaining such a license should be nominal, and the small burden placed upon track employees should be considered as part of their obligation to preserve the integrity of racing. The same rule should apply to all others directly involved with the sport.

State licensing practices are presently time-consuming, costly, and repetitive to members of the racing industry. Because modern racing demands much interstate travel by participants, owners, trainers, jockeys and others are often confronted by duplicative licensing requirements. To alleviate this problem, the Commission recommends that the States adopt reciprocal licensing practices that would allow racing participants in good standing in one State to be allowed to race in other States.

Track Security. Currently, track security at racetracks throughout the country is primarily the responsibility of the individual tracks or private trade organizations connected with racing. Evidence from the Commission's parimutuel hearings indicates that States provide very little support or control for security at racing meets.

The States derive tax revenue from racing but, with the lone exception of Illinois, provide no police support for overall security and little for crowd and traffic control. Illinois charges the tracks for its police services. Because private security agencies, while doing exemplary work, are ultimately funded by the tracks, some question of their impartiality inevitably arises. While it is true that most law enforcement agencies do not presently possess the expertise necessary to provide professional levels of track security, this capability should be developed with experience.

In light of the substantial revenues the States derive from racing, the Commission recommends that, at no additional cost to the tracks, the States should develop an expertise in track security to protect, in conjunction with the TRPB and HTS, the interests of the public and other affected persons from violations of State security laws. This should be done by racing commissioners' establishing their own security divisions.

Clean racing requires an atmosphere in which the tracks are free from criminal activity, and even from the appearance of criminality. Tampering with the conduct of a horserace is among the activities that should be controlled by diligent law enforcement.

On their face, the State statutes appear to be capable of preventing this type of conduct. The question is whether the agencies responsible for enforcing these laws are performing effectively, or whether there is a need for a Federal presence to prevent race tampering. As noted, States should increase their efforts to curtail such activities. However, should a greater commitment by the States to racetrack security not be forthcoming within 2 years, the Commission recommends that Federal law enforcement agencies be given jurisdiction to act against those who tamper with race conduct.

Potential security problems are raised by common ownership or control of racing animals, although that danger has not become a serious problem in the horseracing field. Some dog owners charge, however, that dogtracks have begun to enlarge their operations to include the ownership of racing animals. To combat possible abuses, the greyhound racing industry has instituted safeguards such as self-grading, lockout kennels, special identification techniques, and the drawing of lots to fill race cards. Despite these precautions, however, it is impossible, as a practical matter, to prevent an owner from treating his animals in a way that would favor one over another in a race, through overexercising or overfeeding, for example.

Many dogowners believe that ownership of several kennels by a single trackowner is an increasing problem in their industry. The Commission is not in a position to judge this claim. The Commission finds no economic abuse in the ownership of a kennel by a track; it objects instead to the legal camouflaging of common ownership or control of kennels by one legal interest. The Commission believes that such multiple ownership presents the potential for improperly affecting the outcome of animal racing and strongly recommends against the practice.

Exotic Wagering. The Commission has heard many witnesses testify on the subject of exotic wagering and most of them were in agreement: It is a bad practice, but one that is necessary for the economic survival of the industry. With this type of betting, payoffs to successful bettors can be extremely lucrative.

Veteran handicappers, who take pride in their knowledge of horses and racing, generally disdain exotic wagering because expertise becomes less and less valuable as the odds rise. The casual racing fan is more likely to be enticed by the high payoffs. But that appeal is not always limited to honest horseplayers--criminal elements sometimes find that the long odds justify the risks they run in fixing races. Most of the recent scandals in racing have centered around exotic wagering. This may be, however, because of the recent proliferation of exotic wagering in tracks around the country, rather than because of an inherent corruption factor in such wagering.

A nationwide ban on exotic wagering might reduce the incidence of race-fixing by substantially lowering its benefits to the fixers, but with the average daily track attendance already in decline, any major inroad into the popularity of racing could endanger the industry. Furthermore, the Commission has received no evidence to suggest that race-fixing would not continue even without the presence of occasionally astronomic odds. For these reasons, the Commission recommends that no immediate steps be taken by the States to abolish exotic wagering. Consistent with its stated national policy, the Commission recommends that State racing commissions review exotic wagering policies and determine which types of wagering are most advantageous to the State and the public.

If, after their review, the State racing commissions find a clear need for decisive policies to deal with the problems of exotic wagering, and if the States prove unable or unwilling to enact laws and regulations to meet that need, then Federal control may well be warranted in this area. In view of the fact that tracks without exotic wagering may be at a severe disadvantage to tracks that allow it, any Federal legislation in this area should be designed to insure uniformity among the States.

Types of Racing. At present, all State racing commissions except New Hampshire have combined jurisdiction over horseracing and dogracing in States where both are permitted.

The similarities between the two kinds of racing, and the identical public interest served by the regulation of each of these activities, suggest that a common statute can adequately provide for the control of both, and that a single State racing commission is capable of exercising jurisdiction over all forms of animal racing. Indeed, the development of coherent State racing policies is enhanced by placing authority to regulate all types of racing in the hands of one agency.

That said, it is necessary to identify any major differences between horseracing and dogracing, and to determine whether a single commission should adopt different policies toward each type of racing. At the present time, dogracing practices differ from those of horseracing in two major aspects:

- Greyhound tracks employ a closed booking method in order to fill racing cards. Unlike the open entry method used in the horseracing field, this entails supply contracts between breeders and tracks. As a result, dogtrack owners hold much greater leverage over dog breeders than do their counterparts in the horseracing field.

- The ownership of dogtracks is more monopolistic than that of horsetracks. In two States, Arizona and Florida, this situation is even more severe. As a result, the tracks' leverage over the dog industry in these States is great.

Because of these differences, the Commission recommends that State racing commissions be allowed to deny a license to conduct a racing meeting to an applicant who has already received a license to conduct a race meeting of the same breed in the same racing season. This recommendation is discretionary rather than mandatory, so that commissions have the latitude to distinguish between monopolistic situations that do not threaten an economic imbalance in the racing industry affected, and those that do.

The Commission also recommends that no form of racing be statutorily precluded. However, a racing commission may decide, based on the public interest in its State, to place restrictions on certain breeds of racing animals. State racing commissions should be in the best position to make these determinations. But the Commission observes that in order to best serve the public interest, the State racing commission must employ rigorous economic analyses in making such decisions.

The Commission also recommends that a single racing commission oversee all animal racing permitted in a State. That agency should regulate the breeds as uniformly as possible, but distinguish among them to reflect significantly disparate industry practices.

Economic Policies. Many, if not most, of the decisions a State racing commission is called upon to make are economic. The commission sets policy in the awarding of racing dates, the location of tracks, the number of races held, types of races held, and payment of purses and other awards. The commission also enforces the takeout rate decided by the State legislature. Yet, despite its primary economic function, the State racing commission often is unaware of the economics of the industry it regulates.

Little economic research has been done on the entire area of racing. Not much is known, for example, of the precise effect of the rate of increase in racing dates on the quality of horses and the size of the field. The size and quality of the field probably influence the handle, but no research has been done to demonstrate the relationship. The effect of mixed racing on the handle has not been investigated. Nor have the States extensively analyzed the profits from individual parimutuel industries in setting takeout rates. Increasing takeout has been cited by trackowners as a cause in the decline in daily attendance, but a complete study of this area has not been made. Perhaps most significantly, the market for parimutuel wagering on races has yet to be defined.

The Commission believes that the allocation of racing dates is an area ripe for reform. Most States created exclusive territorial franchises a generation ago. At the time, these restrictions prevented destructive competition between the tracks and promoted State revenues. Today, under different market conditions, the requirement that tracks be located a certain distance from each other has become an inefficient criterion for allocating racing dates. Population density, geography, and local custom provide better market guides.

The Commission recommends that State racing commissions and the racing industry jointly fund market research programs to develop the information necessary to establish criteria for the setting of policies in such matters as takeout rates, the allocation of racing dates, and the location of tracks. Such information would enable the commissions and the State legislatures to choose the best means to promote revenues to the State and profits to the industry by fulfilling the desires of the racing public.

The Commission recognizes, in the alternative, that if the States demonstrate an inability to resolve these economic issues successfully, congressional action may well be merited because of racing's inherent interstate aspects as well as the potential national interest in the financial health of the industry. Congress may limit takeouts, for example, on either a regional or national level, through the imposition of Federal ceilings with credit given for contributions to State governments consistent with existing formulas. In the event that State measures prove inadequate, the Commission recommends passage of such Federal legislation.

Animal Medication. Medication standards in racing are a continuing source of controversy. Initially, there were no controls over many drugs and other medicines. With the advent of more exact testing methods and a higher concern for the integrity of racing, progressively more restrictive standards were imposed, until some jurisdictions pronounced an absolute ban on medications of any kind, including such a widely used analgesic as phenylbutazone. The effect of prohibitory medical regulations peaked with the disqualification of Dancer's Image as the winner of the 1968

Kentucky Derby upon the discovery of phenylbutazone in the horse's postrace urine sample. Since that time, some States, Kentucky among them, have eased their bans on medications and prohibited only stimulants, depressants, narcotics, and local anesthetics. Medicinal compounds, such as analgesics and some ointments which do not impair or exaggerate the performance of a racing animal, are more often permitted today.

Controlled medication standards allow a racing animal to run more days during the year. With the recent trend toward increasing racing dates, horseowners find their animals in greater demand to fill out the proportionately greater number of cards. But even with controlled medication, the number of short fields in horseracing is increasing. Economic pressures have driven horseowners to push for permissive medication rules. Proponents of controlled medication also argue that horses are not being pushed beyond their natural abilities by the permitted medicines, and that bettors rely on a horse to run true to form.

Disclosure to the public of medication to an entered racing animal in those States that permit medication is also a subject of debate. Disclosure is favored as a consumer protection measure that aids the bettor in choosing an entry. Disclosure is opposed as a misleading indicator of the animal's ability to run, since many other factors, not similarly made public, also have an effect on its speed in a race. Further, disclosure may pressure a trainer to medicate a racing animal unnecessarily, either in the belief that it will affect its performance (the betting public believes, often erroneously, the medication will improve an animal's performance), or to prevent a healthy animal from being claimed after a claiming race.

Controlled medication is itself criticized. The effects of many permitted drugs upon racing animals are not fully known. As noted elsewhere in this report, fundamental research in many areas of racing has yet to be done.

The Commission recognizes the helpful research done by the American Association of Equine Practitioners and the Association of Official Racing Chemists and believes that the standards they have formulated for the racing industry should and will be adopted. There is, however, a great need for research into the physical effects of drugs upon racing animals; the States, acting separately, may never be able to generate the resources necessary for the AAEP and the AORC to examine these problems fully. The Commission feels that the racing industry would benefit from the cooperation of the Food and Drug Administration in developing standards governing approval of the medication for use in racing animals. The FDA is the agency of the Federal Government responsible for the safe dispersal of medications to the public. If it were to set forth the proper testing procedures before a drug could be allowed to be used in racing animals, it would greatly aid the determination of the effects of medications on the animals. Such a modest commitment by the Federal Government would promote uniformity of State medication policies without interfering with the ability of the States to make a final determination on this matter.

The Commission recommends that the racing industry, in cooperation with such groups as the American Association of Equine Practitioners and the Association of Official Racing Chemists develop uniform drug detection and analytical standards governing the medication of racing animals. The Commission also recommends that the Congress appropriate funds to the Food and Drug Administration to enable it to expand its research into nonfood-producing animals.

Jai Alai. Parimutuel wagering is not confined to animal racing. Jai alai is played legally in Florida, Nevada, and Connecticut. Rhode Island has legalized parimutuel wagering on matches, although it does not yet have an operating fronton.

The State of Florida, which has been regulating the sport for more than 40 years, has found no instances of dishonest practices. This finding should not be interpreted to mean that opportunities for corruption do not exist. The Commission believes that many of the same dangers of corruption found in racing are present in jai alai. These include the potential bribing of participants in order to affect the outcome of the games, drugging of the players, and the arranging of matches that do not truly equalize the skills and abilities of the players. Because fronton owners handle the public's money, the State licensing them must not allow criminal elements to gain positions of ownership or to influence fronton owners through economic leverage. Thorough and sophisticated financial disclosure laws reduce the likelihood of criminal elements gaining control of fronton operations.

Regulators in Florida and Nevada stress the strict security employed by their States and the integrity of the participants as reasons for jai alai's honest image. The Commission believes that both States are regulating the game adequately. Problems may arise, however, if there is a rapid expansion of the game among the States.

The major problem--the unfamiliarity of the public and State regulators with the rules of jai alai and with the players performing in the frontons--could heighten the potential for dishonest practices within the sport. Jai alai players have had a long tradition of honesty in the conduct of their sport. The current pool of players, however, is rapidly being exhausted by the recent expansion in the number of frontons, and whether this tradition will remain is unknown. However, the present system of prize money awards based on individual performances may help insure jai alai's continued reputation as a game honestly played.

The Commission recommends that any State that introduces jai alai as a forum for legalized gambling should exercise a high degree of caution regarding both the quality of the players and the regulatory procedures used in overseeing the sport. Florida provides a good regulatory and policing model for States interested in jai alai.

LOTTERIES

BACKGROUND

State-operated lotteries are conducted in 13 States, reaching from Maine in the North to Illinois in the West and Maryland in the South, with the exceptions of Vermont and Indiana. These States account for approximately 40 percent of the Nation's population. Raffles are legal to some extent in 21 States. In the other 29 States they are totally prohibited, either by a specific statute outlawing raffles or defining them as illegal lotteries.

State lotteries, although a comparatively recent development in legal gambling, are the third most widely available form of gambling--after bingo and parimutuel wagering. Approximately 70,000 sales outlets make State-conducted lotteries the most accessible form of gambling to the public in those States.

Since the reintroduction of legal lotteries in 1964, lottery commissions have striven to promote lottery games that will appeal to the demands of the gambling public in their States. Expensive tickets and lack of action plagued both the original New Hampshire Sweepstakes in 1964 and the New York Lottery in 1967: Revenues for both lotteries were much lower than had been anticipated by their legislative proponents. In contrast, the New Jersey 50-cent weekly game, introduced in 1971, proved enormously successful because of its affordable tickets and quick results. Lotteries are viewed by their participants as a passive form of gambling that is free from corruption and generates substantial revenues for government. To increase participants' involvement, State lotteries frequently market lottery games that feature faster action and a greater degree of participation by ticket purchasers; the games have enjoyed significant increases in ticket sales. The instant lottery game, introduced in Massachusetts in 1974, has proven to be the most innovative and lucrative game the lotteries have yet marketed. Gross lottery sales increased by 45 percent in calendar year 1975 over the previous year, and most of the increase must be attributed to the phenomenal success of the instant games.

Another innovation in the legal lottery industry designed to provide purchasers with a greater sense of participation is the daily numbers game introduced in New Jersey in 1975 and in Rhode Island and Massachusetts in 1976. State lotteries had demonstrated an ability to attract great volumes of money through their limited-action, nonparticipatory lottery games, but the introduction of the daily numbers game in those three States may also be viewed as the first legal game established specifically to combat an ongoing illegal operation.

Since the introduction of the original New Hampshire Sweepstakes in 1964, the State lotteries have systematically increased public awareness and participation in this passive form of legal gambling through their ability first to identify their market and, second, to produce and advertise a diverse line of games in order to cater to the particular desires of different segments of the population within their States.

The National Gambling Commission's research indicates that almost one-quarter of the adult population in the United States bought lottery tickets in 1974. Lotteries have a broader participation rate than any other form of commercial gambling, drawing players from all demographic groups. As with many other forms of gambling, lottery participation increases as income increases and is highest among whites and suburbanites. As with bingo, participation is greatest among the middle-aged. Almost half the residents of lottery States bought lottery tickets in 1974, spending an average of $25 a year each, according to the preliminary results of the Commission's national survey of gambling.

CONSEQUENCES AND RECOMMENDATIONS

The Federal Government should limit itself to preventing the channels of interstate commerce from being used to interfere with State policies concerning lotteries. If lotteries of any nature--whether State-conducted, commercial, or played for civic or charitable causes--are authorized within a given State, there is no rational justification for Federal denial of the use of mailing or broadcasting facilities to disseminate materials or information about such a lottery within that State.

If the purchase of lottery tickets is permissible within a sister State, the Federal Government should not prevent the channels of interstate commerce from being used to facilitate the traffic of lottery materials and information between those States. Accordingly, unless a State has specifically prohibited the sale or possession of certain lottery materials, the Federal Government should not prevent those materials from being mailed into that State from States where such materials are also legal; likewise, the broadcasting of information and advertising about such a lottery by licensees located within a State where the sale and possession of such lottery materials are legal should not be prevented.

At the same time, the Federal Government should stand ready to assist any State when the facilities of interstate commerce are being used to promote interference with that State's lottery policies. If the sale or possession of certain lottery materials has been prohibited by a State, the Federal Government should prevent those materials from being mailed or transported into that State from other States, regardless of the legality of those materials in the State of origin.

Similarly, the broadcasting of information about lotteries by licensees located within States where such lotteries are illegal should be forbidden. Before Federal sanctions become operative, however, it should be necessary for a State to have prohibited or regulated the sale, possession, or promotion of such lottery materials. The statutory revisions proposed by the Commission in Chapter 2 would effect these changes in present Federal policy.

The National Gambling Commission's survey data support the conclusion that the basic weekly lottery, as presently operated by all 13 lottery States, does not have a harmful impact on society. Almost half the residents of those States play the game at least occasionally, and the average amount wagered is less than $25 a year. All segments of society participate in lotteries and very little time and emotional involvement are expended by the players.

Although it appears that access to a State lottery increases participation in illegal numbers games, the recent introduction of legal, daily numbers games in three of the lottery States may reverse that trend. At present, however, there are not enough data to determine whether these legal numbers games will be truly competitive with their illegal counterparts and whether they will discourage or encourage participation in the illegal games, although these States do contend that their games are making inroads into the illegal numbers play.

As a source of revenue to the States, lotteries are relatively inefficient compared to broad-based forms of taxation. They are also more regressive than most other forms of gambling, since individuals in lower income brackets spend proportionally more money on them than do persons with higher incomes. No State now derives more than 3 percent of its total revenues from lotteries, and it would be futile for State policymakers to look to lotteries as a substitute for traditional forms of taxation. Although a well-managed State lottery can make a modest contribution to satisfying a State's overall revenue needs, the Commission recommends that in this instance the earmarking of lottery revenues for specific State programs be avoided because this practice tends to warp the budgetary process and to deprive State officials of the flexibility required to meet changing needs.

In general, State lotteries have developed highly successful systems of internal security and are capable of protecting the integrity of the games from theft, forgery, and related conduct. Where problems have occurred--most notably in New York--they have been due to breakdowns in management, resulting in the failure to supervise adequately the control mechanisms necessary to insure trouble-free operation. The Commission believes that State lotteries should be governed by statutes and regulations that provide those responsible for the proper management and control of the games with sufficient authority. The lottery agency should be headed by one individual who is directly responsible to the Governor. He should have the power to hire and fire employees, to make contracts, and to promulgate the necessary regulations to insure efficiency and propriety. The daily administration of State lotteries must be taken out of the political arena.

If a State is going to operate a lottery, it needs more than effective management. By directly engaging in the promotion of a gambling business, a State takes on the responsibility of insuring that that enterprise is conducted in the best interests of the people. Indeed, the State as lottery entrepreneur has a special fiduciary responsibility to its citizens; since the presumption exists that the State is acting on behalf of the people, it has an obligation to inform them of its intention to profit from their participation. Accordingly, the State must take care to fully inform the public as to the odds and character of the games being offered, and to avoid any misleading practices in its advertisements and promotional activities. Although the basic weekly lottery is a relatively benign form of gambling, the States should conscientiously disseminate information about the probabilities involved in winning a prize, and should scrupulously limit their lottery advertisements to those informing the public of the existence and nature of the games offered, rather than actively encouraging them to participate. The various promotional overlay games should be operated under the same standard. As long as these steps are taken, the States are capable of operating such lotteries without any avoidable adverse consequences to the community.

Where the Commission does find a serious potential for abuse in practices of the State lotteries is in their increasing reliance on the instant game as both a promotional vehicle and a revenue source. Because lotteries are basically regressive, and because the odds against the player's winning a prize are greater than in most other forms of gambling, any lottery which in fact encourages frequent participation might prove to be inimical to the general welfare. The nature of participation in instant games should be carefully monitored; the lotteries have acknowledged that these games, when first introduced, fostered instances of long lines of players repeatedly purchasing tickets. The Commission's social survey was conducted too early to provide full data on instant games; however, should evidence of excessive participation arise, the Commission believes that actual State promotion of such lotteries would sacrifice the best interests of the public to the desire to obtain revenue. Since attempts to limit the frequency of player participation appear to be unenforceable, the Commission would see no alternative to recommending that such games should not be conducted directly by the States. If a State is unwilling to forego the revenues from such lotteries, it would be preferable to have them operated by private entrepreneurs who were as strictly licensed and controlled as are the casino operators in Nevada. Then, at least, the participants would be fully aware that the games were designed only to make money, with the States imposing taxes and licensing fees to generate revenues.

If State-conducted lotteries are properly set up and managed, and if their promotional and marketing techniques are strictly controlled, they can be an effective means of raising modest revenues for government purposes without adverse consequences to the public. To implement these policies, the Commission will recommend adoption of a model statute by States which choose to operate lotteries. This enabling act will be contained in the Commission's final report.

BINGO

BACKGROUND

The National Gambling Commission's original research--especially the tentative conclusions of its survey of gambling in America--has uncovered two facets of bingo playing that may contradict earlier perceptions of the game: Bingo is big business--nearly $2 billion annually --and it is played extensively throughout the United States whether it is legal or not. These findings will enable the States to evaluate their policies toward bingo and perhaps to change them.

Although bingo is now legal in 34 States, regulation of it varies widely: Only Nevada and Maryland allow straight commercial bingo; in most other States, bingo may be played only for charitable purposes. Almost all of the 34 States require bingo licenses, but few have license control boards--licenses are merely filed with a State or local government office and are available, usually for a nominal fee, to anyone with an ostensibly charitable purpose. Most bingo operations keep few or sketchy records; often the bingo statutes themselves do not require a strict accounting of income. Many times the charities these games are conducted to support receive only a small fraction of the money taken in. Often, charity bingo sponsors hire commercial bingo operators to run the bingo session. Although these commercial operations ostensibly run only charity games, they in effect amount to private businesses operating full-time and for profit.

Bingo holds a unique position among the various forms of gambling: Many people do not consider it true gambling at all. Because bingo sessions are usually run or sponsored by charitable organizations--churches, synagogues, service clubs, and the like--people tend to attribute to it a respectability they would not accord, say, numbers playing. Bingo operations--lawful or not--function so openly and are so numerous that many players never question their legality. And some would argue that the amount of money an average player spends on an evening of bingo--less than $6.00--is too small to be considered "gambling;" rather, they see it as an "entertainment" fee.

Despite bingo's popularity as a charity fundraiser and its reputation as a harmless pastime, it has been the object of abuse by a number of sources: Illegal parlors resort to tricks to circumvent the law or openly defy it. Racketeers are thought to control bingo games--legal and illegal--in a number of urban areas. Scams that defraud the government, the players, and the charities are practiced by both organized criminal groups and shady independent operators. Some bingo players have devised elaborate cheating schemes.

Law enforcement generally ignores illegal or dishonest bingo games: The few police efforts to crack down on these games are often resisted by the public, who want to play and see no harm in it; and most municipal or State budgets have few funds to spare for investigations. Many policemen believe that illegal bingo is a "victimless" crime, too insignificant to merit intensive enforcement.

CONSEQUENCES

In formulating bingo policy, the States must examine what their goals are, whether the benefits of effective regulation are worth the cost, and whether stronger regulation serves the public interest.

If the goal of increased regulation is to control illegal or dishonest bingo, States should realize that the effort requires considerable increases in money and manpower, as well as the active support of the community and its law enforcement personnel.

If revenues are the goal of bingo regulation, the States must be aware of how much money the games can be expected to generate. As with other forms of legalized gambling, there is a point at which operating costs and taxation decrease the payoff to the public to such an extent that the public turns to illegal games where the payoffs are higher.

The Commission feels that the States should be aware of these issues as they develop their policies toward bingo. To that end, the Commission has drafted a model regulation designed to insure a realistic, practical, and orderly approach to bingo for those States wishing one.

RECOMMENDATIONS

The Commission perceives little difference between "charitable bingo" and commercial bingo. Charitable bingo as it exists in most States is charitable only in that it is sponsored by statutorily sanctioned organizations such as churches and service clubs. It is operated, however, like a commercial operation: It offers large cash prizes; it promotes elaborate games designed to induce participants to buy more--and often more expensive--bingo cards to increase their chances of winning; and, most important, it is open to everyone, not just to members of the sponsoring organization. Many charitable bingo occasions are run by commercial bingo operations, not by the members of the sponsoring organization. The Commission's survey has found that people play charitable bingo for the same reasons they might participate in commercial bingo: Bingo provides entertainment and a chance to make money. The charitable aspects of the game are relatively unimportant. For these reasons, the Commission recommends that, for regulatory purposes, no distinction be made between charitable and commercial bingo.

As stated earlier, bingo is a billion-dollar industry played by millions of people in every area of the country, whether it is legal or illegal. Bingo is also the most loosely regulated--or unregulated--form of gambling in America and as such is the object of numerous abuses which affect law enforcement, government revenues, and the players themselves. In addition, bingo is a highly regressive form of gambling, making it imperative that the State or local governing body take steps to control the game. Because of bingo's pervasiveness and the income it generates, the Commission recommends that those States allowing bingo adopt and actively implement regulations to insure that the games are honestly run.

Although it may be possible for a State to obtain certain revenues from legal bingo while actively enforcing the law concerning it, the Commission believes that where a choice must be made, a State should concentrate its resources on the law enforcement aspects of bingo regulation. A minimal State tax on all bingo games could pay for the enforcement of bingo regulation. Whether a higher tax, which would provide revenue in addition to law enforcement, would still enable the game to attract players despite the necessarily lower payout rate is unknown. Unscrupulous practices such as skimming, as well as the suspected involvement of organized crime groups in some bingo operations, also support the contention that tax revenues from bingo should be concentrated on police efforts. The office of the State Attorney General should be responsible for enforcing the regulations.

Bingo's reputation as a harmless form of fundraising is not entirely deserved: Too often the charities these bingo operations support receive only a minute portion of the handle from the games, and players who feel they are victims of unfair or fixed games have no redress. Therefore, the Commission recommends, that the safeguards contained in the model legislation designed to protect the players and, where applicable, the charities, be included in all State bingo regulations. The Commission further recommends that each bingo organization be required to obtain from the State a bond that could satisfy all adjudicated claims against it.

OFF-TRACK BETTING

When New York State legalized the country's first off-track parimutuel wagering system in 1970, it legitimized a well established but generally disreputable profession. After only 5 years of operation, OTB in New York State is expected to generate a handle of about $1 billion in 1976, which translates into many millions of dollars for governments and racing. OTB in New York has created 3,000 new jobs, 2,700 of them in New York City alone. Apart from its considerable impact on the economy, OTB has affected the betting habits of people who have access to it. In attempting to entice customers away from the illegal books, it also attracts people who previously had manifested no interest in either racing or commercial gambling. Finally, OTB has introduced a great deal of controversy. OTB has many opponents both within and outside racing--those who question the fairness of the current system's distribution of revenue, its ability to compete with illegal wagering operations, its effect on the racing industry, and, perhaps most important, the propriety of government as the operator of a gambling enterprise. On the other side are those who view OTB as a positive economic force, one capable of benefiting the governments that operate or regulate it, the racing industry, and the wagering public.

STRUCTURE OF OTB

In 1973, amendments to the OTB legislation established the mechanism for the creation of seven regional off-track betting corporations in addition to the New York City operation. Under this enactment, a minimum of three counties within each region (except the Nassau and Suffolk regions) representing at least 30 percent of the population of the region had to agree to the formation of a public benefit corporation before the end of 1974 or lose their right to enter into the OTB business. Once plans have been drawn up for the formation of a regional OTB corporation, individual cities or counties with populations in excess of 150,000 are eligible to join the corporation.

The second OTB public benefit corporation opened in Schenectady in 1972. This later became part of the Capital Regional Off-Track Betting Corporation. Four other OTB corporations are currently in operation: Western Regional, Nassau Downs, Suffolk Regional, and Catskill Regional. In May 1976, Connecticut became the second State to conduct off-track parimutuel wagering.

The public benefit corporations that operate OTB in New York State are quasi-governmental agencies that operate like private enterprise with respect to business, management, marketing, and advertising procedures. The corporations' purchasing and personnel policies follow government practice, and policy decisions are made jointly with county and city governments.

The business of off-track betting is conducted at branch offices, or betting parlors. These facilities are austere in appearance and contain no seating in the public area in order to discourage loitering. The sale and consumption of food and beverages are prohibited.

Advertising is an important facet of OTB operations. New York City OTB currently spends about $1 million a year to market its product. OTB officials state that the purpose of their advertising campaigns is not to induce people to gamble but to educate the public about how OTB operates and to lure customers away from illegal bookmakers. Officials believe that many people are reluctant to use OTB instead of their bookmakers because they do not understand how OTB works. A third aim of OTB advertising is to remove the "moral taint" from this type of wagering. Ads following this theme feature prominent persons who say they use OTB. OTB ads appear on television and radio, in newspapers and magazines, and on subways and buses.

OTB REVENUE

The New York OTB statute provides that 83 percent of the OTB handle (less breakage) be returned to winning bettors on straight bets (win, place, show, and all two-horse selections) and that 75 percent be returned on exotic wagers. After OTB expenses are deducted, the remaining portion of the takeout is divided among the tracks (which by statute must pay half their share to horsemen in the form of purses), and the government(s) conducting OTB. New York State collects revenue from OTB through a tax on the gross handle. In New York City, about 7.8 percent of the handle currently is devoted to expenses; 11.6 percent is distributed to State and local governments, and 3.9 percent is paid to the tracks. New York tracks receive a higher percentage of the on-track handle than they receive from the OTB handle.

In 1974, the New York City OTB handle was $786,711,624, but in 1975 the handle decreased to $773,550,528. Many observers attribute the decrease to the imposition of a surcharge on OTB winnings. The effect of the surcharge was to increase the OTB takeout on winning straight bets from 17 to 22 percent, and on exotic wagers from 25 to 30 percent. Surcharge revenue is divided between the municipality conducting OTB and the municipalities in which OTB-used tracks are located. Testimony before the National Gambling Commission revealed that some bettors strongly oppose the surcharge and have ceased to bet with OTB as a result. Proponents of the surcharge had predicted that people who had stopped betting with OTB as a result of the surcharge would begin betting at the track instead. But there is no evidence that this has occurred; the decreased OTB handle has not been accompanied by corresponding increases in track handles. About two-thirds of the 1974 OTB bettors were aware that the surcharge existed and said they would use OTB more if the surcharge were repealed. Exactly how much of the 1975 decrease in OTB handle can be attributed to the surcharge cannot be determined conclusively on the basis of data currently available. In any event, the surcharge on New York City OTB alone produced an additional $32 million for governments in 1975.

INTERSTATE OTB

The New York OTB statute contains a provision enabling OTB offices in New York to take bets on out-of-State races under certain conditions. In accordance with these provisions, New York OTB has accepted wagers on races run in Maryland, Florida, Pennsylvania, South Carolina, and Delaware. The law contains provisions for the compensation of New York tracks when OTB accepts wagers on out-of-State races. OTB also enters into contracts to compensate the out-of-State tracks supplying the races.

Interstate off-track wagering has become the most controversial aspect of OTB. Many owners of small- and medium-sized race tracks fear that OTB parlors would put them out of business by offering race track patrons the opportunity to bet on higher quality races run elsewhere. They predict that racing would disappear from all but a few of the Nation's largest and wealthiest tracks. As more tracks closed, they say, many horse owners and breeders would be forced out of business as well, and thousands of workers--trainers, farm and backstretch personnel, suppliers of goods and services--would lose their jobs.

Because some tracks are willing to deal with out-of-State OTB operations and because no satisfactory mechanism exists to prevent the "pirating" of prominent races by OTB without the tracks' consent, many of those within the racing industry believe that the only effective weapon against interstate off-track betting is a Federal law banning the practice entirely.

RECOMMENDATIONS

The Commission's final report will contain a suggested model for the control and operation of off-track betting for those States that choose to legalize this form of gambling. This model will provide suggested formulas for the allocation of revenues between the tracks, horsemen, and all levels of government. Basically, the Commission will recommend that the States exercise greater restraint in deriving revenue from this source than has been evidenced in New York. (The Commission refers to the recent addition of a surtax by New York City on off-track betting, which has had the effect of reducing the overall wagering handle.) The Commission believes that all levels of government should cooperate with the racing industry in the maintenance of off-track betting, and should strive to keep the takeout rate as low as possible, consistent with reasonable revenue objectives.

In general, the Commission considers the public benefit corporation, as used in New York, to be an appropriate means of operating off-track betting. However, it believes that a public benefit corporation engaged in the promotion of a gambling enterprise has a special responsibility to the public and should not be governed exclusively by the profit motive. Specifically, it believes that advertising that directly encourages citizens to participate in off-track wagering has no place in a quasi-public agency. The excessive promotion of OTB in New York City is expressly disapproved by the Commission.

The interstate aspects of off-track betting present a different question. If one State wished to derive revenues from the placing of wagers on races run in another State, despite the wishes of that State, should the Federal Government step in to prevent such a practice?

Given the Commission's national policy, before Federal legislation in this area is enacted it should be shown that (1) only Federal legislation will protect the interests of a State, and (2) there is a significant national interest involved. In this context, the Congress should resist unsupported assumptions and premature conclusions, and should carefully weigh this Commission's findings before rendering final judgment.

If Congress finds that there is a substantial national interest in protecting racing from the likely consequences of wide-open interstate off-track betting, and that nothing short of Federal legislation will prevent interstate off-track betting, the question then becomes one of determining what form the Federal legislation should take. Certainly, a blanket prohibition of interstate off-track betting would put a stop to the practice. However, given its national policy of Federal restraint, the Commission believes that it would be more appropriate to seek less drastic means. If Federal legislation is deemed necessary, there would be merit in providing an exemption for interstate off-track betting that is agreed upon by the States involved. If States are able to reach agreement on contractual terms of compensation and services, then the Federal Government would serve no interest in preventing such activity. Accordingly, the Commission recommends that the States should be able to consent to their exemption from the reach of any Federal prohibitory legislation. This would be more consistent with the Commission's national policy than a blanket prohibition, inasmuch as it would enable the States to reach agreements on this type of activity while protecting the interests of those States which choose to prevent off-track betting entirely.

APPENDIX

Below is a list of staff and consultant papers prepared for the Commission on the Review of the National Policy Toward Gambling and a list of transcripts of hearings held by the Commission. These papers and transcripts are available, in papercopy and microfiche, from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. When ordering, please refer to the Source Code GAMBC and, where available, the NTIS Accession Number.

PAPERS

Title and Author	Accession No.	Prices
"Moral Views on Gambling Promulgated by Major American Religious Bodies," by Raymond C. Bell	PB243817	Papercopy: $4.75 Microfiche: $2.25
"Gambling-Related Corruption," by Carol Duncan	PB243818	PC: $3.75 MF: $2.25
"Gambling Enforcement and Police Corruption," by Jonathan Rubenstein	PB243819	PC: $3.75 MF: $2.25
"Gambling in Perspective: A Review of the Written History of Gambling and an Assessment of its Effect on Modern American Society," by Fact Research Inc.	PB243820	PC: $5.25 MF: $2.25
"Social Aspects of Gambling," by Kathleen Joyce	PB243821	PC: $4.25 MF: $2.25
"Gambling--The Issues and Policy Decisions Involved in the Trend Toward Legalization--A Statement of the Current Anachronism of Benign Prohibition," by Patricia Helsing	PB247427	PC: $3.50 MF: $2.25
"Analysis of A Project on Gambling Activity in England and Wales," by David M. Downes	PB247440	PC: $4.00 MF: $2.25
"The Development of the Law of Gambling: Federal," by Robert G. Blakey	PB248041	PC: $4.50 MF: $2.25

TRANSCRIPTS

Subject and Date		Accession No.	Prices
Lotteries	April 3, 1974	PB253621	PC: $8.00 MF: $2.25
Justice and IRS	May 15, 1974	PB253610	PC: $6.75 MF: $2.25
FBI, FCC, and Postal	June 26, 1974	PB253643	PC: $6.75 MF: $2.25
Lotteries, Dog-fighting	November 19-20, 1974	PB253647	PC: $11.00 MF: $2.25
Lottery Opposition (Legalization of Gambling)	December 4, 1974	PB253699	PC: $9.75 MF: $2.25
Gambling and Lotteries (Legalization of Gambling)	December 5, 1974		
Gambling, Law Enforcement and Organized Crime	March 9-11, 1975		
Off-Track Betting	May 6-7, 1975		
Sports Betting	February 19-20, 1975	PB253644	PC: $10.75 MF: $2.25
Parimutuel Horse-racing	March 4-5, 1975	PB253696	PC: $16.25 MF: $2.25
Philadelphia, Pa. (Law Enforcement)	May 28-29, 1975	PB253698	PC: $16.25 MF: $2.25
Detroit, Mich. (Law Enforcement)	June 24-26, 1975		
Nevada (Casino Gambling)	August 18-22, 1975	PB253674	PC: $23.75 MF: $2.25
Chicago, Ill. (Law Enforcement)	September 23-24, 1975	PB253672	PC: $18.75 MF: $2.25

Subject and Date		Accession No.	Prices
Miami, Fla. (Law Enforcement, Pari-mutuel Wagering, Casinos)	November 24-25, 1975	PB253620	PC: $10.75 MF: $2.25
Boston, Mass (Law Enforcement, Organized Crime)	April 9-11, 1975	PB253695	PC: $16.25 MF: $2.25
Cleveland, Ohio (Law Enforcement)	January 16, 1976		

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EXHIBIT F

(Greyhound Review, October 1975)

Kiper Sentenced To Prison On Arson, Larceny Conviction

OCALA -- Richard D. Kiper, 47, was sentenced Monday, Aug. 11, in circuit court to 25 years in prison for grand larceny and arson.

Judge Wallace Sturgis ordered Kiper confined to the Florida Division of Corrections for 10 years on the arson conviction and five years on each of three grand larceny convictions. The grand larceny sentences are to run concurrent with the arson sentence, so Kiper will spend 10 years in prison plus five years on an arson conviction from Pinellas County.

The former Air Force captain was tried June 16 on charges of stealing two greyhounds and a dog trailer, plus setting fire to a small building and shooting into the home of Ben and Viola Jacques. He was acquitted of the shooting charge.

Prior to the trial in Marion County, Kiper was convicted in Clearwater of second-degree arson at a Pinellas County greyhound kennel owned by Bob Thomas. He was also charged there with killing 24 of Thomas' greyhounds and shooting into an occupied vehicle, but was acquitted on the latter charges.

Richard Kiper

EXHIBIT G

Miami Shores Village
FLORIDA
33138

JOHN FLETCHER
CHIEF OF POLICE

March 10, 1975

Mr. Doug Morris
Supervisor of Greyhound Racing
Division of Pari-mutuel Wagering
1350 N. W. 12 Ave.
Room 510
Miami, Florida 33136

Dear Mr. Morris:

I am in receipt of your letter, dated 7 March, 1975 in which you have requested a copy of our communications with San Diego, California authorities. Please be advised that I have not been contacted by any representative of that city, and have offerred no comments as to the law enforcement problems which may be associated with that activity.

It is quite possible that one of my officers may have come into contact with a representative, and responded to his questions without knowledge of the purpose of the inquiry. I would not, however, expect the off-hand comments of this officer to be construed as the official response of my agency.

I certainly have no objections to answering questions that relate to police operations in our jurisdiction, but the unauthorized use of my agency to support a particular move by another governmental organization is not acceptable. I hope that your office would take this into account if any further letters are received from San Diego authorities. Our department has not responded to any inquiry which was even remotely related to the operations of greyhound racing in our area.

Sincerely,

John Fletcher

John Fletcher
Chief of Police

JF/mw

CITY AND COUNTY OF DENVER

W. H. McNICHOLS, JR
Mayor

DEPARTMENT OF SAFETY

DENVER POLICE DEPARTMENT
POLICE BUILDING
THIRTEENTH AND CHAMPA STS.
DENVER, COLORADO 80204
(303) 266-2421

March 19, 1975

Mr. George G. Hardie
Golden State Greyhound Association
925 L. Street - Suite 270
Sacramento, California 95814

Dear Mr. Hardie:

The Denver Police Department Intelligence Bureau was established in May of 1953 and the primary duty was the investigation of organized crime and those persons involved or associated with illegal or nefarious activities.

It must be noted that neither the dog or horse racing track is located in the City and County of Denver, Colorado, but are located at Littleton, Colorado in Arapahoe County for the horses, and in Commerce City, Colorado located in Adams County, Colorado for the dog racing.

The information was gleaned by an investigator from the State of California who was given access to the newspaper information covering over a twenty year period. Each of the six mentioned problem areas have occurred at one time or another during this twenty-two year period as they have at various tracks, both dog and horses, throughout the United States. In all fairness this type of activity was set forth by the clientele attracted to racing rather than the business operators as such. Denver did experience some problems in the initial openings of such tracks, partially due to the newness, and has had stable operations for many years. The violations that were enumerated did in fact occur, and will probably repeat themselves in the future, as people are involved.

The six points are not prevalent but are factors that can and have taken place.

Sincerely,

Arthur G. Dill
ARTHUR G. DILL
Chief of Police

AGD:am

The City of Daytona Beach
PUBLIC SAFETY AGENCY
Division of Police
P.O. Box 2166
Daytona Beach, Florida 32016

December 2, 1974

A. O. FOLSOM, JR., Public Safety Director
R. H. PALMER, Deputy Director — Police

Mr. George G. Hardie, President
Golden State Greyhound Association
925 L Street - Suite #270
Sacramento, California #95814

Dear Mr. Hardie:

This will acknowledge your letter of November 19, 1974 regarding greyhound racing in the City of Daytona Beach. We have had the Daytona Beach Kennel Club in operation for the past 24 years as well as a Jai Alai Fronton which has been in operation for some 12 years and, as far as a problem in policing is concerned, we have never had any serious problems. One of the main reasons is that our off-duty Police Officers perform all the police duties for these two enterprises.

We, also, have one of the largest racing facilities in the world which is the Daytona Beach International Speedway which draws over 100,000 people each year and we can see no difference in crime due to the Speedway, the Kennel Club and the Jai Alai. I am sure you are aware that a certain amount of the criminal element follows all crowds and gatherings where people congregate, whether it is a sports event or otherwise. I know of no cities in Florida that have race tracks that have had any serious problems as far as crime is concerned.

The City of Daytona Beach is a resort city within a well known resort area and we enjoy thousands of visitors every year and many of them consider greyhound racing and Jai Alai two of their main attractions during their stay in Daytona Beach.

CITY OF PUEBLO COLORADO

Department of Police
E. L. Willoughby
Chief of Police

November 27, 1974

Mr. George G. Hardie
President, Golden State Greyhound Association
8787 Shoreham Drive
Los Angeles, California 90069

Dear Mr. Hardie:

In reference to your letter of November 19, 1974, I would make the following comments concerning the effects of greyhound racing and its relationship to crime.

First, Pueblo Greyhound Park was opened for racing some 25 years ago. Up until three years ago, it was located in the County of Pueblo, out of our jurisdiction. At the time it opened, there were no homes and few business houses close to the track.

Large crowds attend racing events at the park and we can attribute only a small percentage of police problems to greyhound racing in Pueblo. The track has its own security police which our department feels is the key to the elimination of police problems at such gatherings. We seem to have little problem in the "home" which might be attributed to the para-mutual betting at the park.

Since we had no jurisdiction in police matters for the first 22 or so years of operation and since we have no police problem of any real concern, we have not found the necessity to keep any statistics concerning crime or other police problems related to the greyhound park.

Sincerely yours,

E. L. Willoughby
E.L. Willoughby
Chief of Police

ELW:mm

1753 Belle Meade Road
Encinitas, Ca. 92024
March 8, 1975

Mr. George Young
Golden State Greyhound Association
3774 Fifth Avenue
San Diego, California

Dear Mr. Young:

I was greatly provoked after reading the article by Mr. Otto J. Bos in the San Diego Union of February 21, 1975. I finally came to the conclusion that I would write you to express my sentiments.

I recently retired as executive secretary of the Oregon Racing Commission after twenty-eight years of service. We moved to our present address and intend to reside in Southern California from now on.

In Oregon we conducted both horse and greyhound racing as you may know. The State's revenues from greyhound racing had been a great deal more than horse racing during most of the years during my service and only in the last few years has horse racing started to equal that of greyhound racing.

During this period of time from 1946 to 1974 the problems encountered from greyhound racing were considerably less than that for horse racing. We also never experienced any involvement of organized crime or the corruption of officials in Oregon.

I have attended many conventions of the National Association of State Racing Commissioners and on my retirement was made an Honorary Life Member of that organization. During these conventions greyhound racing was represented by the various States conducting greyhound racing, as well as other greyhound racing organizations. The creditably of greyhound racing was always recognized and given proper consideration.

It seems to me that the question of greyhound racing in California should be given the same consideration as horse racing and if one is critisized the other type of racing should be also.

I feel so strongly on the honesty of greyhound racing that I wanted to let you know my disagreement of the article mentioned above.

Sincerely yours,

Herman Chapman

Herman S. Chapman

CITY OF WEST MEMPHIS
West Memphis, Arkansas 72301

27 November 1974

Mr. George G. Hardie
Legislative Office:
925 L Street, Suite 270
Sacramento, CA 95814

RE: Your inquiry concerning
greyhound racing tracks

Dear Mr. Hardie:

I can understand your reasons for your questions and will attempt to answer with all fairness.

The Southland Greyhound track has been operating in our city since 1956, and has grown into one of the largest in the country.

The biggest police problem we have with the track is traffic in and out on racing nights. Fortunately the racing plant is located within 1/8 mile of Interstate 55 & 40 and this relieves the congestion considerably. Extra police manpower is needed from 6 PM until midnight to handle the traffic. We do not have any police problem with the track itself. The people who work at the track are mostly local residents working part time. The dog owners and their families do not constitute a problem, they rent apartments and buy groceries just like everyone else. The primary police problem other than traffic is an occasional complaint of thefts from parked automobiles. This is no different than would be the case of a parking lot at a football or baseball game.

We have not been annoyed by any migration of unsavory persons into the city during the racing season. I beleive that ninety percent of the track patrons are citizens of Memphis, Tennessee, just across the river. The people from out-of-state who follow the track are no problem. We have not received any reports of big-time gamblers frequenting the races.

The security officers working inside the track buildings are local citizens working part time, paid by the track and commissioned by the city or county. The chief of security is an ex-police officer. City policemen working off duty and paid by the track handle the outside policing such as patroling parking areas and working the vehicular traffic in and out. There are (25) twenty-five security men inside the track and seven off duty officers outside. Most of the inside men are police reserve officers of the city or county.

I trust that this letter will help you in your investigation. One final comment - the extra revenue received by the city from the track operation far overshadows the small increase in police problems.

Very truly yours,

Parvin Romines
Chief of Police

PR:lb

City of Miami Beach
FLORIDA 33139
"VACATIONLAND U.S.A."

POLICE DEPARTMENT
ROCKY POMERANCE
CHIEF

120 MERIDIAN AVENUE
TELEPHONE: 673-7935

December 23, 1974

Mr. George G. Hardie, President
Golden State Greyhound Association
8787 Shoreham Drive
Los Angeles, California 90069

Dear Mr. Hardie:

We are in receipt of your letter of November 19, 1974 regarding law enforcement priorities which are connected with the establishment of pari-mutuel dog tracks. We have had a dog track in this city for over 40 years and, of course, there are certain demands for police services which are directly connected to its existence. We will attempt to be helpful to you, in this instance, by answering the questions set forth in this inquiry:

1. The most pressing service problem is the necessity to provide traffic control to the entry and exit of an unusual amount of traffic flow. We have further experienced a rise in minor street crime in the dog track area (for example: purse snatch, pick pockets, etc.). Historically, counterfeit currency and bad checks present an additional problem.

2. The term undesirable, as it relates to people, is difficult to define. However, in answer to your question, we may only say that habitual race track patrons seem more or less similar at pari-mutuel plants nationwide.

3. Police department personnel are employed by the Miami Beach Kennel Club in an "off duty" capacity and function as a supplement to the existing race track civilian security organization. Their "off duty" salary is paid by the track, they are licensed by the Florida State Racing Commission and they are provided life and accident insurance within the employment agreement of the Kennel Club. They are also used, additionally, to provide the traffic control personnel mentioned in number one above.

We take no political position in the desirability or undesirability of a pari-mutuel race track in any community. We are responding to your inquiry in an attempt to be of assistance in your research effort.

Please be assured of our assistance and cooperation in matters of mutual interest.

Cordially,

ROCKY POMERANCE
CHIEF OF POLICE

W.R. Philbin

By: W. R. Philbin, Major
Commanding Officer-
Detective Division

Miami Police Department
City of Miami, Florida

BERNARD L. GARMIRE
CHIEF OF POLICE
P. O. BOX 520014
MIAMI, FLORIDA 33152

December 4, 1974

Mr. George G. Hardie
Golden State Greyhound Association
925 L. Street, Suite 270
Sacramento, California 90069

Dear Mr. Hardie:

Thank you for your letter and your kind remarks about our department. In response to your inquiries about crime rate statistics in and around the Flagler Dog Track, we will attempt to give you an overview of this problem in the following paragraphs.

It is usually the case that whenever, you have a large gathering of people in a concentrated area your crime rate will go up. The Flagler Track area is no exception to this rule. During the time that the track is open we show a marked increase in such crimes as purse-snatches, vandalism to autos, robberies, and all types of petit larcenies.

These types of crimes can be prevented to some degree by more police units in the area and the hiring of off-duty police officers to patrol inside the track itself.

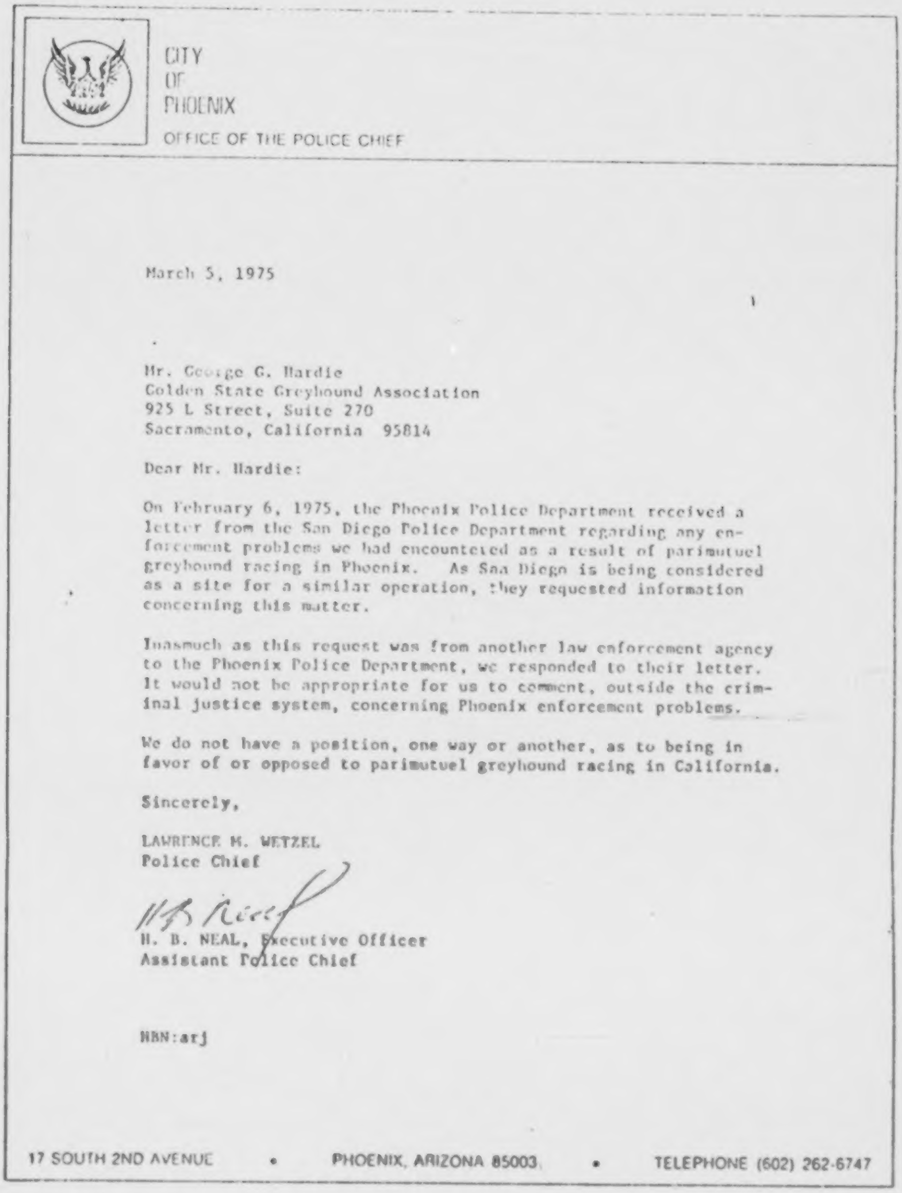
As you probably already realize we are not at liberty to give you any information regarding organized crime activities in the area, but we do hope that this information on the general crime rate will be beneficial to you in your study.

Please do not hesitate to contact us again if we can be of any further assistance to you.

Sincerely,

Captain James W. Reese
for Garland P. Watkins
Acting Chief of Police

GPW:MEO:crs



CITY
OF
PHOENIX
OFFICE OF THE POLICE CHIEF

March 5, 1975

Mr. George G. Hardie
Golden State Greyhound Association
925 L Street, Suite 270
Sacramento, California 95814

Dear Mr. Hardie:

On February 6, 1975, the Phoenix Police Department received a letter from the San Diego Police Department regarding any enforcement problems we had encountered as a result of parimutuel greyhound racing in Phoenix. As San Diego is being considered as a site for a similar operation, they requested information concerning this matter.

Inasmuch as this request was from another law enforcement agency to the Phoenix Police Department, we responded to their letter. It would not be appropriate for us to comment, outside the criminal justice system, concerning Phoenix enforcement problems.

We do not have a position, one way or another, as to being in favor of or opposed to parimutuel greyhound racing in California.

Sincerely,

LAWRENCE M. WETZEL
Police Chief

H B Neal
H. B. NEAL, Executive Officer
Assistant Police Chief

HBN:arj

17 SOUTH 2ND AVENUE • PHOENIX, ARIZONA 85003 • TELEPHONE (602) 262-6747

SARASOTA POLICE DEPARTMENT
P. O. BOX 3528
SARASOTA, FLORIDA 33578

F. L. SCOTT
CHIEF OF POLICE

TELEPHONE: AREA 813
388-3930
366-8000

November 25, 1974

George G. Hardie, President
Golden State Greyhound Association
8787 Shoreham Drive
Los Angeles, California 90069

Dear Mr. Hardie,

The Sarasota Kennel Club has been in operation for a number of years. It attracts a cross-section of residents from both local and surrounding communities.

Our dog track is on the north side of the city, near the city limit line. We have very few problems associated with the track; no more than at other sports events attracting equal crowds.

It does not attract undesirable people who create community problems. The operation of the Kennel Club has not caused crime problems.

The Sarasota Kennel Club has its own security force, and its rapport with this department is excellent.

In closing, I would say that the Sarasota Kennel Club is an asset to this community in many ways.

Very truly yours,

F. L. Scott

F. L. SCOTT,
CHIEF OF POLICE

FLS/ys

Town of Seabrook, N. H.
POLICE DEPARTMENT
PHONES 474 3434 OR 474 2217

November 25, 2974

Mr. George G. Hardie
President
Golden State Greyhound Association
Legislative Office
925 L Street, Suite 270
Sacramento, California 95814

Dear Mr. Hardie:

In answer to your letter of November 19, inquiring as to whether or not there is additional crime during the racing season, I would like to say that there has been no increase in crime up to the present time. The only increase has been in traffic violations.

Very truly yours,

Raynold F. Perkins
Chief of Police
Seabrook, N.H.

RFP/ct

City of WEST PALM BEACH
WEST PALM BEACH, FLORIDA

WILLIAM M. BARNES
CHIEF

POLICE DEPARTMENT

November 27, 1974

Mr. George G. Hardie, President
Golden Gate Greyhound Association
8787 Shoreham Drive
Los Angeles, California 90069

Dear Mr. Hardie:

I would like to preface my remarks with the statement that the Palm Beach Kennel Club plant and grounds are not within the city limits of West Palm Beach, but are in the adjacent unincorporated area of Palm Beach County. I am familiar, however, with the track's operation, having been a lifelong resident of this city.

As the Chief of Police of the City of West Palm Beach, I can speak to the problem of crime or other problems of maintaining law and order during the race meeting, and I can tell you that they are nonexistent. It has been my finding that the kennel owners and other dog men are all good citizens first, and are an asset to our community.

The dog tracks bring a great deal of additional revenue to our area in the form of part-time work for the citizens of the community, as well as being a tourist attraction, and we wholeheartedly support its operation. The dog track in our particular community has had outstanding administration;--and on the isolated occasions that there have been any problems of any kind, they were never swept under the rug, but were always aired publicly and steps taken to correct any of the incidents - and these have been indeed few over the years.

I cannot furnish any statistics to you as none are available concerning the operation of the dog track. The tax money derived from the race meeting at the Palm Beach Kennel Club is distributed throughout the State along with other paramutual benefits, and this, of course, has meant a great deal to residents such as myself in the form of tax relief.

Trusting this is the information you desire, I remain

Very truly yours,

William M Barnes

William H. Barnes
Chief of Police

WMB:my

"Tropical Florida's FIRST Resort"

City of Tampa
POLICE DEPARTMENT 1710 TAMPA ST., TAMPA 2, FLORIDA 33602

5 December 1974

Mr. George G. Hardie
President
Golden State Greyhound Association
925 L Street, Suite 270
Sacramento, California 95814

Dear Sir:

Reference is made to your letter dated 19 November 1974 and received by this Department 27 November 1974, relative law enforcement matters connected to dog tracks.

This Department cannot attribute any additional crimes to the Greyhound Racing Season. Traffic and Crowd Control needs are primary during the actual course of a racing performance. Other violations may occur on the Greyhound Track premises, however, they are parallel to those experienced at any public function in which large crowds are attracted.

The greatest majority of patrons are local residents of the community, however, Greyhound racing seems to be a popular tourist attraction also. There are those "professional gamblers" that follow the races around the state and establish temporary residency in the community in which the track is open at the time. The percentage of this type individual is minimal. Florida statutes give such broad administrative powers to Pari-Mutuel Security Officers that the "professional gamblers" also are normally the best behaved patrons, possibly fearing that any police action against them could result in their being prohibited from entering any pari-mutuel establishment in the state.

In order that you may evaluate these facts in their proper perspective, the following information on the Tampa Greyhound Track is submitted for your perusal.

Racing performances are held each night of the week, with the exception of Sunday. In addition, there are matinees on Monday, Wednesday and Saturday. Twelve (12) races are run during each performance and the length of the season is approximately seventeen (17) weeks.

Page 2.

From 3,000 to 9,000 patrons wager between $200,000 and $550,000 a performance, depending upon the day of the week. During the 1972 season, 675,903 patrons wagered $44,845,887.00 and 82.58% of this money or $37,035,882.32 was returned to the patrons through winning tickets. The State of Florida derived $3,277,798.81 in commission and taxes.

In regards to track security, the Tampa Greyhound Track pays full time Tampa Police Officers for this purpose. They are paid as an independent contractor and not an employee of the track and are used in sufficient number so as to control traffic and deal with any other needs for police service on the premises.

If the Tampa Police Department can be of further service to you in the future, please do not hesitate to call.

Sincerely,

CHARLES OTERO
Chief of Police

By: MC Turner
M. C. Turner, Major, NA 82
Services Division

DWN:kvd

EXHIBIT H

NATIONAL PARI-MUTUELS STATISTICAL REPORT 1981

Locations of Tracks and Frontons
Attendance
Volume of Business
Revenue Generated
Per Capita Wagering
Trends since 1978

Law Enforcement Survey
  Crime
  Undesirable Elements
  Community Acceptance

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PART I

A STATISTICAL REPORT OF THE NUMBER OF DAYS OF OPERATION, ATTENDANCE, PARI-MUTUELS HANDLED, REVENUES GENERATED, AVERAGES AND PER CAPITA WAGERING AT ALL COMMERCIAL TRACKS AND FRONTONS IN THE UNITED STATES FOR THE YEAR 1981, AND TRENDS OF EACH SINCE 1978. AVAILABLE FIGURES FROM FAIR MEETINGS ARE ALSO INCLUDED.

The information for the following statistics has been obtained from the Racing or Gaming Commissions of each state, or from the tracks or frontons themselves.

These are the latest figures available. However, it must be noted that some states use calendar years for their reports, while others are on a fiscal basis. There are even a few cases where figures have been used from tracks which have completed their schedule for 1982. For all practical purposes, we are designating these latest figures 1981, and the percentages of increase or decrease throughout the report are in comparison to 1978 figures obtained in exactly the same way and handled in the same manner. The 1978 figures, in their entirety, can be found in chapters #7 and #8 of the book, "Wanta Bet?", which we published in March of this year.

Statistics from other sources might vary in small degrees from this report, so it might be well to explain the guidelines that we have used.

1. States reporting figures from fiscal dates are handled in exactly the same way as those using calendar dates.
2. Where tracks or frontons conduct more than one program per day, i.e. afternoon and night sessions, each is considered a separate performance for statistical, daily averages, and per capita purposes.
3. Figures for horse tracks holding mixed meetings have been broken down as accurately as possible by using the percentage of the number of races held for each category and designating a certain number of racing days to each during this same period. We are also using the same method to determine the attendance for each sport.
4. Where actual attendance figures were not furnished or were not available, estimates were obtained from the tracks themselves whenever possible. In the rare cases where these were not given, we have used estimates from previous years as a guideline.
5. Increases or decreases in percentages have been figured on a daily average basis rather than volume. It is our viewpoint that this method will give a better picture of the trends when treated in this manner.
6. Figures from State or County Fairs were not used when arriving at daily averages and per capita wagering at state and national levels, but were used to arrive at total revenue generated from these sources.
7. Observations and opinions as to why certain tracks, states, or sections of the country have shown gains or losses in different parts of their operations are our own, and based on our past experience in the pari-mutuels industry, and upon the amount of information we were furnished from different areas.

NATIONAL TOTALS FOR PARI-MUTUELS WAGERING IN THE UNITED STATES 1981

SPORT	NO. STATES	NUMBER OF PERFORMANCES		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds	(24)	6305		47,993,784	6,653,982,283	344,724,629.28	1,055,150	138.64
Quarterhorses	(13)	758		2,955,476	345,273,842	12,279,219.40	455,506	116.83
Harness Racing	(14)	5604		23,325,435	2,798,439,823	133,148,177.69	499,365	119.97
Greyhounds	(14)	5916	2405M	21,255,528	2,152,646,523	152,988,463.88	258,700	101.27
Jai Alai	(4)	2062	839M	7,871,246	606,580,143	43,312,597.53	209,093	77.06
OTB	(2)				1,681,340,713	158,680,052.00		
Fairs (Documented)					211,093,274	9,808,843.41		
Miscellaneous Revenue						24,386,004.53		
National Totals		20645	3244M	103,401,469	14,449,356,601	879,128,007.72	*525,619	*121.44

M Denotes Matinees

*Daily averages and per capita wagering excludes OTB and Fairs.

When studying the increases and decreases of 1981 pari-mutuels statistics nationally, in comparison with 1978's figures, probably the most important factor to remember is that even though there were 259 more performances overall, there was an increase of 798 matinees in dog racing and jai alai. Actually there were 539 less days when racing and jai alai were presented. At most locations, where matinee and night sessions are held, matinees do not draw as well in either attendance or handle.

So while the average performance in 1981 drew 83 less customers than in 1978, attendance, actually, a little better than held its own, all facts considered. But holding its own may not be enough.

The volume of wagering at all tracks and OTB locations increased during this 3 year period by one billion, 808 million dollars, an average of $52,141 per performance. Three factors probably account for most of this increase. First: Inflation—which is reflected in a $14.21 per capita gain, or 13.25%; the fact that many of the larger tracks raced more days in 1981 than in 1978 (the reduction in actual days was, for the most part, at smaller installations); and third, the updated and more sophisticated totalisator equipment, resulting in the cash-sell system now in use at most major tracks, along with an increase in the minimum wager permitted to $3.00 and even $5.00 in some pools (from the traditional $2.00 minimum) at many tracks and jai alai frontons.

The total revenue of $879,128,007.72 was 130 million, 300 thousand more than in 1978. Helpful, but not spectacular when you consider the increased need for more revenue during this inflationary period.

In reading the 1981 reports from Racing and Gaming Commissions throughout the country, it is apparent that many of these governing bodies are trying harder than ever before to find solutions to the old problem of declining attendance and the need for better security measures. Solutions to these problems are an absolute must in order to present a better image of racing and jai alai, and to give more confidence in their operations to the betting public. They are also giving much more attention to the new problems, especially ways to combat the effects of inflation, the sluggish economic situation, and the need for added revenue in almost all areas of the country as applies to pari-mutuels operations.

RECAP OF PARI-MUTUELS WAGERING ON THOROUGHBREDS (1981)

TRACKS STATES	NO. TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Arizona	5	187	841,308	84,545,001	3,709,813.92	452,112	100.49
Arkansas	1	56	1,296,735	159,195,877	9,697,598.62	2,842,784	122.76
California	5	450	8,568,721	1,498,472,727	99,786,603.00	3,329,939	174.87
Colorado	2	107	368,770	38,397,535	1,525,899.75	358,855	104.12
Delaware	1	63	358,508	44,127,517	709,594.00	700,437	123.08
Florida	5	344	2,315,855	372,301,296	9,821,536.58	1,082,273	160.76
Idaho	2	49	127,715	6,913,210	252,401.20	141,086	54.12
Illinois	5	506	3,980,797	536,604,535	37,657,557.00	1,060,483	134.80
Kentucky	4	293	2,154,706	236,986,464	11,246,857.00	808,828	109.98
Louisiana	5	482	2,965,366	444,410,080	20,493,348.15	922,013	149.86
Maryland	5	307	2,381,544	309,480,309	12,585,626.37	1,008,079	129.94
Massachusetts	1	227	1,581,876	210,506,754	10,793,293.08	927,343	133.07
Michigan	2	196	1,066,686	151,766,067	9,612,942.00	774,317	142.27
Montana	2	63	N.A.	7,693,163	76,931.63	122,114	N.A.
Nebraska	5	231	1,636,106	181,369,296	9,313,229.41	785,148	110.85
New Jersey	3	286	2,947,122	408,228,220	7,850,740.50	1,427,371	138.51
New Mexico	5	187	744,778	74,393,778	1,279,749.54	397,812	99.88
New York	4	469	6,312,684	941,803,903	44,230,410.27	2,008,093	149.19
Ohio	3	384	1,750,240	221,361,724	15,688,462.02	576,463	126.47
Oregon	2	96	461,611	41,667,105	1,409,724.34	434,032	90.26
Pennsylvania	4	537	2,974,553	337,690,757	19,825,398.10	628,847	113.52
South Dakota	1	20	31,660	2,352,526	71,755.46	117,626	74.30
Washington	3	264	1,646,423	193,572,955	9,436,783.30	733,231	117.57
West Virginia	2	500	1,480,058	148,144,037	7,648,574.00	296,288	100.09
Totals	77	6,303	47,993,784	6,653,902,263	344,724,629.28	1,055,350	138.64

Thoroughbreds raced 157 days less in 1981 than in 1978, but the handle was up in volume by 935 million, average wagering per performance increased by [illegible], or 19.33%. Per capita wagering was up $17.19 or 14.15% and attendance up 330 per day for an increase of 4.53%. Revenues collected were up only 13 million, or 3.9%.

At first glance, it would appear that the industry is very healthy but when you look more closely, this is not necessarily true. A 4.53% increase in attendance is not good over a 3 year period, especially when you know that many of the larger tracks raced more days, which would also account for much of the increase in handle. Inflation accounts for a large portion of the per capita increase, which also reflects the increase in volume and daily average handles.

What is most encouraging is that the decisions of many states to take less in revenue and give the tracks more of the commission seems to be working. This is obvious by the slight increase in revenue to the states and is doing much to keep the thoroughbred tracks afloat, during a very difficult economic period.

Figures on this report will vary with most others, since we attempted to approximate the number of days raced, the percentage in attendance and the proportionate money bet when mixed meetings with quarter horses were held. We feel we are very close and the slight differences will have very little bearing on the overall statistics.

AVERAGE HANDLE PER PERFORMANCE BY STATE

California (5 tracks)	$3,329,939
Arkansas (1 track)	2,842,784
New York (4 tracks)	2,008,093
New Jersey (3 tracks)	1,427,371
Florida (5 tracks)	1,082,273
Illinois (5 tracks)	1,060,483
Maryland (5 tracks)	1,008,079
Massachusetts (1 track)	927,343
Louisiana (5 tracks)	922,013
Kentucky (4 tracks)	808,828
Nebraska (5 tracks)	785,148
Michigan (2 tracks)	774,317
Washington (3 tracks)	$ 733,231
Delaware (1 track)	700,437
Pennsylvania (4 tracks)	628,847
Ohio (3 tracks)	576,463
Arizona (5 tracks)	452,112
Oregon (2 tracks)	434,032
New Mexico (5 tracks)	397,812
Colorado (2 tracks)	358,855
West Virginia (2 tracks)	296,288
Idaho (2 tracks)	141,086
Montana (2 tracks)	122,114
South Dakota (1 track)	117,626

PER CAPITA BETTING BY STATE

California (5 tracks)	$174.87	Washington (3 tracks)	$117.57
Florida (5 tracks)	160.76	Pennsylvania (4 tracks)	113.52
Louisiana (5 tracks)	149.86	Nebraska (5 tracks)	110.85
New York (4 tracks)	149.51	Kentucky (4 tracks)	109.98
Michigan (2 tracks)	142.27	Colorado (2 tracks)	104.12
New Jersey (3 tracks)	138.51	Arizona (5 tracks)	100.49
Illinois (5 tracks)	134.80	West Virginia (2 tracks)	100.09
Massachusetts (1 track)	133.07	New Mexico (5 tracks)	99.88
Maryland (5 tracks)	129.94	Oregon (2 tracks)	90.26
Ohio (3 tracks)	126.47	South Dakota (1 track)	74.30
Delaware (1 track)	123.08	Idaho (2 tracks)	54.12
Arkansas (1 track)	122.76	Montana (2 tracks)	N/A

AVERAGE HANDLE PER PERFORMANCE (TOP 10 TRACKS)

Santa Anita (California)	$4,856,273	Aqueduct (New York)	$2,768,338
Hollywood Park (California)	4,803,632	Gulfstream (Florida)	2,070,634
Belmont Park (New York)	3,071,373	New Jersey Sports & Exposition Authority (N.J.)	1,907,273
Delmar (California)	3,037,578	Golden Gates (California)	1,766,330
Oaklawn Park (Arkansas)	2,842,784		
Saratoga (New York)	2,812,197		

PER CAPITA BETTING (TOP 10 TRACKS)

Bay Meadows (California)	$187.64
Hollywood Park (California)	186.01
Gulfstream (Florida)	179.63
Golden Gates (California)	178.33
Aqueduct (New York)	176.14
Hialeah (Florida)	175.79
Fairgrounds (Louisiana)	169.43
Santa Anita (California)	166.97
Tropical Park (Florida)	165.71
Louisiana Downs*(Louisiana)	158.02

TOP 10 TRACKS—VOLUME 1981

Track	Performances	Volume
Santa Anita (California)	118	$ 573,040,251
Aqueduct (New York)	171	473,383,855
Hollywood Park (California)	97	465,952,326
Belmont Park (New York)	114	350,136,467
Suffolk Downs (Massachusetts)	227	210,506,754
Keystone (Pennsylvania)	211	199,391,357
N. J. Sports & Exposition Authority (N.J.)	101	192,634,526
Arlington Park (Illinois)	120	192,385,631
Golden Gates (California)	105	185,464,662
Louisiana Downs (Louisiana)	105	178,160,747

RECAP OF PARI-MUTUELS WAGERING ON QUARTER HORSES IN (1981)

TRACKS STATES (13)	NO. TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Arizona	3	48	82,093	5,583,240	125,858.17	116,317	68.01
California	2	240	1,659,469	229,902,905	9,256,216.00	957,929	138.54
Colorado	2	48	120,597	11,728,087	455,822.01	244,335	97.25
Florida	1	50	124,185	10,171,157	66,077.83	203,423	81.90
Idaho	2	20	55,268	1,912,417	92,155.52	95,621	34.60
Louisiana	1	90	240,707	30,219,915	824,640.00	335,777	125.54
Michigan	1	41	13,164	689,414	39,456.00	16,815	52.37
Nebraska	3	43	45,885	1,679,579	8,947.50	39,060	36.60
New Mexico	5	114	430,413	42,764,479	938,095.01	375,127	99.35
Ohio	1	23	37,176	2,981,780	107,662.72	129,643	80.20
Oregon	2	22	105,419	6,014,280	339,831.32	273,376	57.05
South Dakota	1	3	4,744	335,357	10,763.32	111,786	70.69
Wyoming	2	16	36,356	1,291,221	12,912.00	80,701	35.51
Totals	24	758	2,955,476	345,273,842	12,279,239.40	455,506	116.83

The quarter horse trends are the hardest of all categories to determine. A large percentage of quarter horse races at pari-mutuels tracks are at mixed meetings with thoroughbreds. While we have tried very hard to approximate the number of patrons in attendance at these mixed meetings because of the quarter horses, slight errors in judgement will change the percentages to quite a degree. This is true because the overall volume nationally is small when compared to thoroughbreds and standardbreds. The number of racing days were calculated by the number of quarter horse races held during these meets.

It appears that this sport is quite in line with the others. Handle and per capita are on the rise but attendance is not keeping pace at the same rate. It seems a sport is accepted or rejected to a greater degree by the geographical location of a track, more than the others. The West and Southwest are its best areas, and the future success of the quarter horse will depend largely on the success or failure of several states that are presently attempting to pass new pari-mutuels legislation.

AVERAGE HANDLE PER PERFORMANCE BY STATE

California (2 tracks)	$957,929
New Mexico (5 tracks)	375,127
Louisiana (1 track)	335,777
Oregon (2 tracks)	273,376
Colorado (2 tracks)	244,335
Florida (1 track)	203,423
Ohio (1 track)	129,643
Arizona (3 tracks)	116,317
South Dakota (1 track)	111,786
Idaho (2 tracks)	95,621
Wyoming (2 tracks)	80,701
Nebraska (3 tracks)	39,060
Michigan (1 track)	16,815

PER CAPITA BETTING BY STATE

California (2 tracks)	$138.54
Louisiana (1 track)	125.54
New Mexico (5 tracks)	99.35
Colorado (2 tracks)	97.25
Florida (1 track)	81.90
Ohio (1 track)	80.20
South Dakota (1 track)	70.69
Arizona (3 tracks)	68.01
Oregon (2 tracks)	57.05
Michigan (1 track)	52.37
Nebraska (3 tracks)	36.60
Wyoming (2 tracks)	35.51
Idaho (2 tracks)	34.60

RECAP OF PARI-MUTUELS WAGERING ON HARNESS RACING (1981)

TRACKS STATES (14)	NO. TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
California	5	249	1,318,329	173,322,992	5,720,725.00	696,076	131.47
Delaware	3	251	806,299	61,416,471	621,305.11	244,687	76.17
Florida	1	105	501,500	49,338,557	795,463.24	469,891	98.38
Illinois	8	695	3,965,862	501,457,236	33,232,131.00	721,521	126.44
Kentucky	5	358	785,802	58,586,799	2,961,763.00	163,650	74.55
Maine	3	275	450,000*	26,279,998	948,933.76	95,564	58.39
Maryland	3	254	948,124	89,059,415	4,770,507.15	350,628	93.93
Massachusetts	1	176	591,560	53,963,278	1,798,028.14	306,610	91.22
Michigan	5	451	1,648,626	216,257,045	13,863,951.00	479,506	131.17
New Hampshire	1	51	66,327	4,139,676	98,213.30	81,170	61.94
New Jersey	3	449	3,802,445	560,346,875	7,346,144.79	1,247,989	147.36
New York	8	1166	4,943,107	640,467,113	38,254,997.72	549,286	129.56
Ohio	4	591	1,704,757	176,907,754	11,586,354.25	299,336	103.77
Pennsylvania	5	533	1,792,147	186,896,614	11,149,460.23	350,650	104.28
TOTALS	55	5604	23,325,435	2,798,439,823	133,148,177.69	499,365	119.97

* Estimated

Harness tracks raced only 17 days less in the same 14 states in 1981 than in 1978, were down in attendance over 2 million fans, or 8.13%, but still bet 34.5 million dollars more, an increase of 1.56% per performance. A per capita increase of $11.12, or 10.21%, made this possible.

Despite the slight gain in handle, the revenue dropped by a little over 23 million dollars nationwide.

Harness racing, more than the other four sports has an alternative to the pari-mutuels tracks via the fair circuits. Although the inflated costs of training horses for racing keeps this option from being profitable to any degree, a large number of fans are being educated to the sport in several states and should provide a good base of customers, should these states pass pari-mutuels legislation in the future.

All in all, there has been little change in the harness racing picture during the past three years. Aside from California, the Midwest and the Northeast areas of the country provide the facilities for most of this sport's fans.

AVERAGE HANDLE PER PERFORMANCE BY STATE

New Jersey (3 tracks)	$1,247,989
Illinois (8 tracks)	721,521
California (5 tracks)	696,076
New York (8 tracks)	549,286
Michigan (5 tracks)	479,506
Florida (1 track)	469,891
Pennsylvania (5 tracks)	350,650
Maryland (3 tracks)	350,628
Massachusetts (1 track)	306,610
Ohio (4 tracks)	299,336
Delaware (3 tracks)	244,687
Kentucky (5 tracks)	163,650
Maine (3 tracks)	95,564
New Hampshire (1 track)	81,170

PER CAPITA BETTING BY STATE

New Jersey (3 tracks)	$147.36
California (5 tracks)	131.47
Michigan (5 tracks)	131.17
New York (8 tracks)	129.56
Illinois (8 tracks)	126.44
Pennsylvania (5 tracks)	104.28
Ohio (4 tracks)	103.77
Florida (1 track)	98.38
Maryland (3 tracks)	93.93
Massachusetts (1 track)	91.22
Delaware (3 tracks)	76.17
Kentucky (5 tracks)	74.55
New Hampshire (1 track)	61.94
Maine (3 tracks)	58.39*

*Estimated

AVERAGE HANDLE PER PERFORMANCE (TOP 10 TRACKS)

N. J. Sports & Expo. Auth. (N.J.)	$2,467,400
Roosevelt Raceway (New York)	1,453,899
Sportsman Park (Illinois)	1,449,757
Yonkers (New York)	1,317,710
Hawthorne (Illinois)	1,125,958
Hollywood Park (California)	1,077,305
Los Alamitos (California)	937,649
Maywood (Illinois)	879,292
Hazel Park (Michigan)	747,572
Wolverine Raceway (Michigan)	726,047

PER CAPITA BETTING (TOP 10 TRACKS)

Lebanon (Ohio)	$187.97
Yonkers (New York)	179.09
Roosevelt (New York)	164.52
Los Alamitos (California)	162.04
N. J. Sports & Expo. Auth. (N.J.)	153.23
Hawthorne (Illinois)	148.61
Maywood (Illinois)	145.18
Wolverine Raceway (Michigan)	143.91
Northville (Michigan)	143.73
Hazel Park (Michigan)	138.26

TOP 10 TRACKS—VOLUME 1981

Track	Performances	Volume
N. J. Sports & Expo. Auth. (N.J.)	182	$449,066,798
Yonkers (New York)	164	216,104,493
Roosevelt (New York)	146	212,269,291
Sportsman Park (Illinois)	117	169,621,625
Maywood (Illinois)	153	134,531,611
Hollywood Park (California)	76	81,875,189
Northfield (Ohio)	188	75,271,031
Hawthorne (Illinois)	63	70,935,346
Northville (Michigan)	141	64,322,579

RECAP OF PARI-MUTUELS WAGERING ON GREYHOUNDS (1981)

STATES (14)	NO. TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Alabama	(2)	316	254M	1,126,143	135,932,509	8,548,079.90	176,536	120.70
Arizona	(7)	597	152M	1,239,438	124,530,968	7,028,778.56	166,263	100.47
Arkansas	(1)	120	32M	1,092,327	121,378,532	7,544,061.98	798,543	111.11
Colorado	(3)	355	96M	1,340,124	148,910,318	7,447,538.90	330,178	111.11
Connecticut	(1)	261	163M	850,026	95,088,000	7,993,000.00	224,264	111.86
Florida	(18)	1800	784M	8,679,881	865,906,415	66,041,854.53	335,103	99.76
Massachusetts	(3)	452	233M	2,357,559	247,150,708	20,327,154.94	360,804	104.83
Nevada	(1)	258	62M	275,942	17,078,054	518,325.62	53,369	61.89
New Hampshire	(3)	513	319M	1,126,813	91,962,225	7,902,777.47	110,532	81.61
Oregon	(1)	82	—	537,295	46,465,316	3,155,976.55	566,650	86.48
Rhode Island	(1)	272	138M	1,149,556	114,374,142	6,599,495.11	278,474	99.49
South Dakota	(2)	258	25M	423,938	33,761,448	2,234,803.79	119,299	79.63
Vermont	(1)	136	45M	226,986	17,017,248	1,087,378.85	94,018	74.97
West Virginia	(1)	296	102M	829,500	93,085,400	3,739,137.66	233,083	112.25
TOTALS	(47)	5916	2405M	21,255,528	2,152,646,523	152,988,463.88	258,700	101.27

M Denotes Matinees

Fourteen states held Greyhound racing meets during 1981, one more than in 1978. The new state was Nevada, which has since closed its doors, but has plans to re-open at a later date.

Racing performances increased by 968 but 650 of these were matinees, which undoubtedly has a strong bearing on the trend percentages that follow.

It is apparent in the first comparison we make, which shows a decline of attendance by 276 fans per performance. The large increase in matinee racing probably accounts for all, or nearly all, of this decline, but even so, it is discouraging that attendance is not on the upswing, a must if this phase of the pari-mutuels industry is to grow and prosper.

Handle per performance was up $3,476 or 1.3%, but this was made possible by per capita wagering—increasing $11.12 per person, or 12.33%.

The top ten tracks in daily average handle were located in five different states. This would appear to be a very healthy trend since they included tracks in New England, the South, the Southwest, the Rocky Mountain region and the West Coast.

Tracks showing the largest figures in per capita wagering tells a different story. With few exceptions, the tracks in this group were dependent on getting customers from locations many miles from the tracks themselves. Those traveling long distances to attend, for the most part, must have been more interested in the gambling aspect than for pure entertainment.

The top ten tracks in volume might be misleading, since none raced less than 150 performances and most were located in populous areas.

The average handle per performance by state is not surprising. The leaders were either in very populous areas or were in locations with little or no competition. It would seem that Massachusetts and Florida were the exceptions. Their success could be explained in part by the fact that they have been the leaders in Greyhound racing since its inception, and the public is more knowledgeable about the sport than in most of the states which were legalized later.

Probably the most surprising figures are in the state which lead in per capita wagering. There seems to be little logic to justify the facts. Usually the general state of economy in an area will be reflected in per capita wagering. This did not appear to be the case in Greyhound racing in 1981.

In summary, there were 968 more performances, 438,707 more customers who wagered $275,985,172 more dollars and an increase of $11.12 in per capita wagering in 1981 than in 1978. Most important of all, 1981 showed an increase of $17,679,946.68 in revenue to states, counties and cities over that collected in 1978.

AVERAGE HANDLE PER PERFORMANCE BY STATE

Arkansas (1 track)	$798,543	Connecticut (1 track)	$224,264
Oregon (1 track)	566,650	Alabama (2 tracks)	176,536
Massachusetts (3 tracks)	360,804	Arizona (7 tracks)	166,263
Florida (18 tracks)	335,103	South Dakota (2 tracks)	119,299
Colorado (5 tracks)	330,178	New Hampshire (3 tracks)	110,532
Rhode Island (1 track)	278,974	Vermont (1 track)	94,018
West Virginia (1 track)	233,883	Nevada (1 track)	53,369

PER CAPITA BETTING BY STATE

Alabama (2 tracks)	$120.70	Florida (18 tracks)	$ 99.76
West Virginia (1 track)	112.21	Rhode Island (1 track)	95.42
Connecticut (1 track)	111.86	Oregon (1 track)	86.48
Arkansas (1 track)	111.11	New Hampshire (3 tracks)	81.61
Colorado (5 tracks)	111.11	South Dakota (2 tracks)	79.63
Massachusetts (3 tracks)	104.83	Vermont (1 track)	74.97
Arizona (7 tracks)	100.47	Nevada (1 track)	61.89

AVERAGE HANDLE PER PERFORMANCE (TOP 10 TRACKS)

Southland (Arkansas)	$798,543	Multnomah (Oregon)	$566,650
Hollywood (Florida)	682,454	Revere (Massachusetts)	531,614
Biscayne (Florida)	648,365	Tampa (Florida)	517,731
St. Petersburg (Florida)	618,415	Flagler (Florida)	484,392
Mile High (Colorado)	568,938	Cloverleaf (Colorado)	386,359

PER CAPITA BETTING (TOP 10 TRACKS)

Interstate (Colorado)	$167.23	Cloverleaf (Colorado)	$116.80
Greentrack (Alabama)	127.87	Colorado Springs (Colorado)	115.26
Black Canyon (Arizona)	126.05	Mobile (Alabama)	114.85
West Flagler (Florida)	120.30	Apache Junction (Arizona)	113.21
Biscayne (Florida)	119.73	Wheeling (West Virginia)	112.21

TOP 10 TRACKS—VOLUME 1981

Track	Performances	Volume
Biscayne (Florida)	239	$ 154,959,245
Revere (Massachusetts)	285	151,510,098
Southland (Arkansas)	152	121,378,532
Lincoln (Rhode Island)	410	114,379,142
Hollywood (Florida)	157	107,145,337
St. Petersburg (Florida)	154	95,235,886
Plainfield (Connecticut)	424	95,068,000
Wheeling (West Virginia)	398	93,085,400
Tampa (Florida)	154	79,730,628
Mobile (Alabama)	367	71,224,420

RECAP OF PARI-MUTUELS WAGERING ON JAI ALAI (1981)

STATES (4)	NO. FRONTONS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Connecticut	(3)	487	194M	2,189,265	209,611,000	15,782,000.00	307,799	95.74
Florida	(12)	1412	629M	5,453,453	385,416,276	26,942,627.96	188,837	70.67
Nevada	(1)	116		95,993	2,985,717	89,571.51	25,303	31.10
Rhode Island	(1)	45	16M	132,535	8,567,150	498,398.06	140,445	64.64
TOTALS		2062	839M	7,871,246	606,580,143	43,312,597.53	209,093	77.06

M Denotes Matinees

Jai Alai frontons were active in the same four states in 1981 as in 1978. The MGM Fronton in Las Vegas resumed operations after being rebuilt from the fire in 1980. Actual performances were 46 less in 1981 but this was due to many fewer sessions in Las Vegas and Newport. Connecticut's performances were about the same both years, but Florida added 462 day and night sessions to almost make up the difference. All in all, attendance was down only 74 patrons per performance, despite 148 more matinees.

Average handle was up $16,505 or 8.57%; a healthy increase considering the additional matinees.

Per capita betting increased $7.97 or 11.53%, a figure very close to the Greyhound figure on a national scale.

Revenue gains in 1981 over 1978 totaled $5,001,268.06. This increase must be credited to Florida, since the other three states collected less in 1981 than in 1978.

AVERAGE HANDLE PER PERFORMANCE BY STATE

Connecticut (3 frontons)	$307,799
Florida (12 frontons)	188,837
Rhode Island (1 fronton)	140,445
Nevada (1 fronton)	25,303

PER CAPITA BETTING BY STATE

Connecticut (3 frontons)	$95.74
Florida (12 frontons)	70.67
Rhode Island (1 fronton)	64.64
Nevada (1 fronton)	31.10

AVERAGE HANDLE PER PERFORMANCE BY FRONTONS

Miami (Florida)	$361,917
Bridgeport (Connecticut)	336,684
Milford (Connecticut)	302,650
Summer, Inc. (Florida)	288,685
Hartford (Connecticut)	283,463
Tampa (Florida)	261,121
Dania (Florida)	260,309
Summersport (Florida)	250,302
Florida (Florida)	176,484
West Palm Beach (Florida)	174,806
Newport (Rhode Island)	140,445
Daytona Beach (Florida)	137,492
Ocala (Florida)	104,316
Melbourne (Florida)	97,707
Fort Pierce (Florida)	88,775
Big Bend (Florida)	80,296
Las Vegas (Nevada)	25,303

JAI ALAI VOLUME 1981

Fronton	Performances	Volume
Bridgeport (Connecticut)	231	$ 77,774,000
Milford (Connecticut)	223	67,491,000
Hartford (Connecticut)	227	64,346,000
Summer, Inc. (Florida)	213	61,532,505
West Palm Beach (Florida)	342	59,783,789
Miami (Florida)	159	57,544,858
Tampa (Florida)	159	41,518,165
Dania (Florida)	159	41,339,076
Florida (Florida)	159	28,060,891
Daytona Beach (Florida)	181	24,886,006
Ocala (Florida)	167	17,420,754
Fort Pierce (Florida)	171	15,180,574
Melbourne (Florida)	154	15,046,954
Summersport, Ltd. (Florida)	52	13,015,692
Big Bend (Florida)	125	10,037,062
Newport (Rhode Island)	61	8,567,150
Las Vegas (Nevada)	118	2,985,717

PER CAPITA BY FRONTON

Bridgeport (Connecticut)	$109.39
Milford (Connecticut)	93.39
Hartford (Connecticut)	84.92
Miami (Florida)	79.64
Summer, Inc. (Florida)	79.44
Big Bend (Florida)	77.37
Florida (Florida)	75.83
Ocala (Florida)	70.62
Fort Pierce (Florida)	67.51
West Palm Beach (Florida)	$67.11
Melbourne (Florida)	66.43
Daytona Beach (Florida)	66.31
Tampa (Florida)	65.64
Summersport, Inc. (Florida)	65.60
Newport (Rhode Island)	64.46
Dania (Florida)	62.54
MGM Las Vegas (Nevada)	31.10

RECAP OF PARI-MUTUELS WAGERING ON OTB (1981)

STATES	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Connecticut						
Teletrack	300*	547,118	72,615,000		129,902	132.72
Telephone Branches	259*		103,362,000	13,500,000.00	184,905	
New York			1,505,363,713	145,180,052.00		
TOTALS			1,681,340,713	158,680,052.00		

*Harness and Thoroughbreds

Many states are experimenting with Simulcasting and other forms of OTB but Connecticut and New York are still the only states with organized systems statewide. The 1981 handle was up $61,245,505 in Connecticut over 1978, or 53.38%. New York also had a 24.76% increase during this period. This amounted to almost 300 million dollars and pushed the yearly total in 1981 to over 1½ billion dollars. The only per capita figures that can be arrived at, were at Teletrack itself, since no accurate attendance figures are available at the branches. $132.72 per person was quite comparable to national averages at the Thoroughbred tracks nationwide. As was noted in the New York recap, the tracks in that state handled 78 million more dollars than OTB, but the gross revenue from OTB was 50 million more than was collected from the tracks themselves.

RECAP OF PARI-MUTUELS WAGERING ON FAIRS (1981)

STATES	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Arizona	50	NA	5,207,427	NA	104,149	NA
California	133	1,128,968	142,889,883	7,271,264.00	1,074,360	126.56
Colorado	67	96,181	3,181,986	166,832.94	47,492	33.08
Idaho	58	NA	2,227,128	61,302.00	38,399	NA
Kentucky	NA	NA	57,839	NA	NA	NA
Maine	54	NA	3,492,901	116,065.83	NA	NA
Massachusetts	48	276,640**	18,650,917	1,659,552.81	388,561	67.41**
Montana	49	NA	2,635,787	26,357.87	53,792	NA
Nevada	8	5,704	307,735	3,077.35	38,467	53.94
New Hampshire	9	32,000**	825,611	23,929.31	91,735	NA
Ohio	178	NA	4,279,190	228,564.74	24,040	NA
Oregon	44	NA	8,062,539	169,566.02	183,240	NA
Pennsylvania	NA	NA	6,246,443	NA	NA	NA
South Dakota	26	35,127**	1,234,986	36,030.17	47,499	35.15
Vermont	8	NA	NA	16,294.14	NA	NA
Washington	29	60,827	2,170,423	27,905.23	74,842	35.68
Wyoming	8	NA	210,105	2,101.00	26,263	NA
Valley Racing Assoc. (Calif.)	21	72,961	8,717,299	155,753.00*	415,109	119.47
Steeplechase (Maryland)	3	41,786	695,075	55,606.00*	231,692	16.63
Totals	793	NA	211,093,274	9,808,843.41	NA	NA

*Revenue included in miscellaneous revenue rather than fairs.
**Estimated

Accurate figures from Fairs throughout the country are hard to document. Many different systems are used to collect revenue. Some are subsidized by the commercial tracks and many conduct their races in conjunction with the other functions of the fairs. In these cases most who pay admissions at the gate can attend the races if they so desire, without further admission fees. Figures that we have been able to obtain show over 200 million dollars in handle, California contributing almost ¾ of this amount. Almost 10 million dollars in revenue came from fairs, but again, California was responsible for over 7 million of this amount. Figures are also misleading in many cases, since different sports were used for wagering in different states. All but jai alai was included in different fair programs.

STATES INCLUDED IN NATIONAL CHART

THOROUGHBREDS	QUARTER HORSES	HARNESS	GREYHOUNDS	JAI ALAI	O T B	FAIRS
			Alabama			
Arizona	Arizona		Arizona			Arizona
Arkansas			Arkansas			
California	California	California				California
Colorado	Colorado		Colorado			Colorado
			Connecticut	Connecticut	Connecticut	
Delaware		Delaware				
Florida	Florida	Florida	Florida	Florida		
Idaho	Idaho					Idaho
Illinois		Illinois				
Kentucky		Kentucky				Kentucky
Louisiana	Louisiana					
		Maine				Maine
Maryland		Maryland				
Massachusetts		Massachusetts	Massachusetts			Massachusetts
Michigan	Michigan	Michigan				
Montana						Montana
Nebraska	Nebraska					
			Nevada	Nevada		Nevada
		New Hampshire	New Hampshire			New Hampshire
New Jersey		New Jersey				
New Mexico	New Mexico					
New York		New York			New York	
Ohio	Ohio	Ohio				Ohio
Oregon	Oregon		Oregon			Oregon
Pennsylvania		Pennsylvania				Pennsylvania
			Rhode Island	Rhode Island		
South Dakota	South Dakota		South Dakota			South Dakota
			Vermont			Vermont
Washington						Washington
West Virginia			West Virginia			
	Wyoming					Wyoming
(24)	(13)	(14)	(14)	(4)	(2)	*(17)

*Fairs are listed only in states which include them in their annual Pari-Mutuels Reports.

REVENUE BY STATE

New York	$239,590,964.00
California	122,190,561.00
Florida	110,861,171.21
Illinois	72,573,515.00
Connecticut	37,275,000.00
Massachusetts	34,578,028.97
Pennsylvania	31,943,354.03
Ohio	27,611,043.73
Michigan	24,211,545.60
Louisiana	21,317,988.15
Maryland	19,177,924.19
Arkansas	17,241,660.60
New Jersey	15,203,686.41
Kentucky	14,208,620.00
West Virginia	13,497,582.16
Arizona	10,934,495.61
Colorado	9,680,942.62
Washington	$ 9,464,688.53
Nebraska	9,322,176.95
Alabama	8,548,079.90
New Hampshire	8,024,920.08
Rhode Island	7,097,893.19
Oregon	5,075,098.23
South Dakota	2,353,352.74
New Mexico	2,220,994.55
Delaware	1,507,115.15
Maine	1,315,951.90
Vermont	1,136,035.09
Nevada	630,974.48
Idaho	405,858.72
Montana	103,289.50
Wyoming	23,495.43
	$889,328,007.72

RECAP OF PARI-MUTUELS WAGERING IN ALABAMA (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Greyhounds							
Greentrack	252	151M	506,013	64,708,089	2,658,367.74	160,566	127.87
Mobile	264	103M	620,130	71,224,420	5,889,712.16	194,072	114.85
Totals	516	254M	1,126,143	135,932,509	8,548,079.90	176,536	120.70
STATE TOTALS	516	254M	1,126,143	135,932,509	8,548,079.90	176,536	120.70

Alabama's pari-mutuels operations were limited to two Greyhound tracks in 1981, the same as in 1978. The number of performances was increased from 644 in 1978 to 770 in 1981. However, this increase of 126 performances was primarily in the number of matinees, 100 of the 126 total to be exact. This fact will explain why the average handle per performance was up less than 3/10th of 1%. It also explains why attendance was down 21.5% per performance. The increase in per capita wagering increased greatly; $26.23 per person, or 27.76%. These additional performances increased the amount of revenue going to the counties by $1,185,892.66 in 1981 when compared to 1978. The overall picture is a healthy one, when consideration is given to the large increase of matinee racing that was held.

RECAP OF PARI-MUTUELS WAGERING IN ARIZONA (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds							
Arizona Downs	49		218,474	24,132,206	1,108,610.30	492,494	110.45
Turf Paradise	69		400,615	39,961,133	1,860,056.65	579,147	99.74
Desert Downs	27		161,820	15,612,082	695,988.16	578,225	96.47
Prescott Downs	17		28,411	2,335,088	20,113.63	137,358	82.18
Rillito Downs	25		31,988	2,504,492	25,045.18	100,179	78.29
Totals	187		841,306	84,545,001	3,709,813.92	452,112	100.49
Quarter horses							
Desert Downs	3		17,097	1,054,321	77,331.99	351,440	61.66
Prescott Downs	19		31,768	1,924,265	22,479.90	101,277	60.57
Rillito Downs	26		33,228	2,604,654	26,046.28	100,179	78.39
Totals	48		82,093	5,583,240	125,858.17	116,317	68.01
Greyhounds							
Amado	73	46M	93,204	9,647,674	478,570.28	81,073	103.51
Apache	61	13M	116,905	13,234,844	697,890.64	178,849	113.21
Black-Canyon	61	12M	84,414	10,640,708	551,821.08	145,763	126.05
Phoenix Park	78	—	288,068	28,014,006	1,680,840.36	359,154	97.24
Tuscon	153	43M	266,238	26,347,262	1,580,835.72	134,425	98.96
Western Racing	78	—	250,876	26,084,624	1,565,077.44	334,418	103.97
Yuma	93	38M	139,733	10,561,850	473,743.04	80,625	75.58
Totals	597	152M	1,239,438	124,530,968	7,028,778.56	166,263	100.47
Miscellaneous Revenue					70,044.96		
STATE TOTALS	832	152M	2,162,839	214,659,209	10,934,495.61	218,150	99.24
Fairs							
Apache Co. St. Johns	4			132,262		33,065	
Cochise Co. Douglas	4			191,240		47,810	
Coconino Co. Flagstaff	4			312,440		78,110	
Gila Co. Globe	4			178,874		44,718	
Graham Co. Safford	4			128,332		32,083	
Greenlee Co. Duncan	4			93,972		23,493	
Maricopa Co. Phoenix	4			2,524,439		631,110	
Mohave Co. Kingman	4			156,926		39,231	
Navajo Co. Holbrook	4			173,052		43,263	
Pima Co. Tuscon	3			327,124		109,041	
Santa Cruz Co. Sonoita	4			309,864		77,466	
Yavapai Co. Prescott	3			522,134		174,045	
Yuma Co. Yuma	4			156,768		43,511	
Totals	50			5,207,427		104,149	

Thoroughbred and quarter horse racing trends showed a good gain in 1981 over 1978. Average daily attendance was up 15.08%, average handled up 15.46% and per capita up 2.79%. Only the per capita did not keep pace with the national averages. This is accomplished while racing a total of 42 more days and showed up most favorably in the amount of revenue collected—over 3 million, 800 thousand dollars—almost 1¼ million dollars more than in 1978.

Dog racing increased their performances by 100 days and one more matinee. The average handle was down only 2/10 of 1 per cent, but this was accomplished by per capita increasing 11.21% while attendance was declining 189 customers per day, or 10.24%. This would look bad unless you knew that the extra days were all run at the smaller tracks in the state. The bottom line is that the revenue collected was almost one million dollars more in 1981 than in 1978.

The Arizona Fair Circuit, active in 13 of the 14 counties, and partially subsidized by the commercial tracks, continued to grow. They are now averaging over 100 thousand per day in handle, an increase of 34.41% since 1978, racing 50 days in 1981 and 49 in 1978.

RECAP OF PARI-MUTUELS WAGERING IN ARKANSAS (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds							
Oaklawn Park	56		1,296,735	159,195,877	9,697,598.62	2,842,784	122.76
Total	56		1,296,735	159,195,877	9,697,598.62	2,842,784	122.76
Greyhounds							
Southland	120	32M	1,092,327	121,378,532	7,544,061.98	798,543	111.11
Totals	120	32M	1,092,327	121,378,532	7,544,061.98	798,543	111.11
STATE TOTALS	176	32M	2,389,062	280,574,409	17,241,660.60	1,348,915	117.44

*Oaklawn Park figures are for 1982

Arkansas limited their racing to one thoroughbred track and one greyhound track, the same as in 1978. The number of days raced increased only slightly during this period. The horses raced seven additional days and the dogs eight more nights and three more matinees.

Oaklawn Park showed a 9.41% increase in attendance and a 21.72% increase in handle. Per capita was also up 11.24%. Oaklawn's 2,842,784 average handle placed it high among the major thoroughbred tracks in the United States.

Southland Greyhound Park, although down 4.12% in attendance, was able to increase their average daily handle 6.17% due to an increase of per capita wagering of 10.76%. Southland's daily average of $798,543 was the highest of any greyhound track in the United States.

Although the statistics for Oaklawn Park were compiled for the 1982 season and Southland's in 1981, it is interesting to note that although the two tracks are not close geographically, offer a different sport for wagering and draw from a different group of fans, the increase in per capita wagering was quite comparable.

RECAP OF PARI-MUTUELS WAGERING IN CALIFORNIA (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Santa Anita	118	3,431,790	573,040,251	39,989,960.00	4,856,273	166.97
Golden Gates	105	1,040,003	185,464,662	10,644,481.00	1,766,330	178.33
Hollywood Park	97	2,504,853	465,952,326	32,890,692.00	4,803,632	186.01
Del Mar	43	827,859	130,615,859	7,804,538.00	3,037,578	157.77
Bay Meadows	87	764,216	143,399,629	8,456,932.00	1,648,272	187.64
Totals	450	8,568,721	1,498,472,727	99,786,603.00	3,329,939	174.87
Quarter horses						
Los Alamitos	191	1,450,908	202,534,069	8,555,403.00	1,060,388	139.59
Bay Meadows	49	208,561	27,368,836	700,813.00	558,548	131.22
Totals	240	1,659,469	229,902,905	9,256,216.00	957,929	138.54
Harness Racing						
Hollywood Park	76	595,985	81,875,189	2,974,955.00	1,077,305	137.37
Los Alamitos	60	347,191	56,258,926	1,914,559.00	937,649	162.04
Sacramento	39	200,215	14,623,519	194,255.00	374,962	73.03
Bay Meadows	35	114,966	14,232,028	393,195.00	406,629	123.79
Del Mar	39	59,972	6,333,330	243,761.00	162,393	105.60
Totals	249	1,318,329	173,322,992	5,720,725.00	696,076	131.47
Revenue (Fairs)				7,271,264.00		
Revenue (Valley Racing Assoc.)				155,753.00		
STATE TOTALS	939	11,546,519	1,901,698,624	122,190,561.00	2,025,238	164.69
Fairs						
Alameda Co.	12	127,080	15,285,770	822,593.00	1,273,814	120.28
Solano Co.	12	84,646	11,924,001	646,315.00	993,667	140.86
Sonoma Co.	12	124,096	12,199,575	656,813.00	1,016,631	98.30
San Joaquin Co.	12	67,620	8,936,022	481,146.00	744,669	132.15
Humboldt Co.	9	33,453	1,262,122	31,737.00	140,236	37.72
Calif. State	14	129,695	11,800,284	641,278.00	843,449	91.04
San Mateo Co.	12	98,511	17,832,261	992,183.00	1,486,023	181.01
So. Calif. Expo	8	48,807	7,572,839	365,442.00	946,605	155.15
Los Angeles Co.	16	218,082	28,895,274	1,366,134.00	1,805,955	132.49
Fresnó Dist.	14	93,716	9,907,917	536,123.00	707,708	105.72
Orange Co.	12	103,262	17,265,798	731,500.00	1,438,816	167.20
Totals	133	1,128,968	142,889,883	7,271,264.00	1,074,360	126.56
Mixed Race Meeting						
Valley Racing Assoc.	21	72,961	8,717,299	155,753.00	415,109	119.47

California Thoroughbred and Quarter Horse commercial tracks showed remarkable gains in all three categories in the three year period from 1978 to 1981. Thoroughbreds were up 1991 customers per day, or 11.67%. Average daily handle increased by almost $684,000 per day, or 25.84%. Per capita was also up almost $20.00, or 12.68%. Number of racing performances were also increased from 400 to 450 during this period.

Quarter horses showed even greater gains. Attendance per day was up 27.75%, average daily handle up 37.70% and per capita 7.88%. These huge gains can be accounted for in part by the fact that although quarter horse racing was held only 8 more days in 1981, a much greater percentage of racing was held at Los Alamitos, which leads the nation in quarter horse figures, but even so, these huge increases are very encouraging to quarter horse interests, who are struggling for gains in other sections of the country.

Harness racing did not show the same trend in percentages. There were seven more racing days in 1981 but the average attendance was down 6.95% and the average handle down 4.39%. As in almost all other cases, the per capita did show a 2.74% gain.

The Fair Circuit, the largest in volume of wagering in the United States, raced a total of 133 days in 1981 as opposed to 122 in 1978. This circuit also showed slight gains in all categories. Plus 3.33% in attendance, 8.82% in handle and 5.29% in per capita wagering.

All commercial racing combined in the state was up 65 in the number of days raced, drawing 2,093,793 more fans in 1981, an increase of 13.7% per performance, average daily handle up remarkably by 26.8% and per capita up by 11.52%.

Not included in any of the above statistics, except in total revenue received by the State, was the 21 day mixed racing meet held by the Valley Racing Association. Including this small track, the State realized $122,190,561.00 in revenue in 1981, as opposed to $112,542,232.00 in 1978.

RECAP OF PARI-MUTUELS WAGERING IN COLORADO (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds							
Centennial	96		346,770	35,691,664	1,427,666.56	371,788	102.92
Centennial (Mixed Meet)	11		22,000	2,705,871	98,233.19	245,988	122.99
Totals	107		368,770	38,397,535	1,525,899.75	358,855	104.12
Quarter horses							
Rocky Mountain	36		96,609	9,295,698	348,588.82	258,214	96.21
Centennial (Mixed Meet)	12		23,988	2,432,389	107,233.19	202,699	101.40
Totals	48		120,597	11,728,087	455,822.01	244,335	97.25
Greyhounds							
Interstate	71	15M	121,710	20,354,284	1,017,714.20	236,678	167.23
Cloverleaf	71	9M	264,613	30,908,710	1,545,435.50	386,359	116.80
Mile High	71	23M	542,112	53,480,184	2,675,593.20	568,938	98.65
Pueblo	71	15M	139,543	12,798,552	640,466.60	148,820	91.71
Colorado Springs	71	34M	272,141	31,368,588	1,568,429.40	298,748	115.26
Totals	355	96M	1,340,124	148,910,318	7,447,638.90	330,178	111.11
Revenue (Fairs)					166,832.94		
Miscellaneous Revenue					84,749.02		
STATE TOTALS	510	96M	1,829,491	199,035,940	9,680,942.62	328,442	108.79
Fairs	67		96,181	3,181,986	166,832.94	47,492	33.08

Colorado thoroughbred tracks raced one more day in 1978 than 1981 but both average handle and per capita betting were up nicely, 14.57% and 19.02% respectively. Attendance, however, was down 3.74% per performance and increase in revenue was only about 4 thousand dollars.

Quarter horses also raced one more day in 1978, but even the attendance was up at this sport (5.41% per performance). Average handle was up $43,453 per day, or 21.61%; per capita up $12.94, or 15.14%; and revenue collected was up $51,797.67 in 1981 over 1978.

Greyhounds also showed healthy trends in all categories. Even with 26 more performances, all matinees, average attendance was up 1.39%; average handle up $43,580 per day, or 15.20%; per capita up $13.31, or 13.6% and revenue collected up $1,357,433.50.

Overall, Colorado trends look very good, especially since all types of racing showed significant gains. Most important of all, revenue increased by more than 1½ million dollars.

RECAP OF PARI-MUTUELS WAGERING IN CONNECTICUT (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Greyhounds							
Plainfield	261	163M	850,026	95,088,000	7,993,000.00	224,264	111.86
Total	261	163M	850,026	95,088,000	7,993,000.00	224,264	111.86
Jai Alai							
Hartford	185	42M	757,659	64,346,000	4,573,000.00	283,463	84.92
Bridgeport	152	79M	708,978	77,774,000	5,438,000.00	336,684	109.69
Milford	150	73M	722,628	67,491,000	4,771,000.00	302,650	93.39
Totals	487	194M	2,189,265	209,611,000	15,782,000.00	307,799	95.74
Revenue OTB					13,500,000.00		
STATE TOTALS	748	357M	3,039,291	304,699,000	37,275,000.00	275,746	100.25
OTB							
Teletrack	300*		547,118	72,615,000		129,902	132.72
Telephone Branches	259*			103,362,000		184,905	
Totals	559			175,977,000	13,500,000.00		

*Harness and Thoroughbreds

Dog racing in Connecticut shows quite a decline since 1978. Although days raced increased only 22 days and the average daily handle was only down about ½%, the average daily attendance was down 11.59%, or about 263 patrons per performance. Per capita betting followed the national trend by increasing 12.69% which kept the average handle on a fairly even level. The decline in attendance is reflected most vividly in the revenue generated which was down almost 900 thousand from that in 1978.

Jai alai followed the same patterns as did greyhound racing. Per capita wagering was up only 5.47% so this factor could not hold the daily average handle fairly even as did the greyhounds. Average handle was down 10.45% due to a 15.1% drop in average attendance. Percentage of night sessions compared with matinees was not a major factor, since performances were held 24 less times at night in 1981 and 16 more times in the afternoons. This would affect averages very little when it is realized that 681 sessions were held in all. Revenue from jai alai in the state dropped to $3,823,358.00.

Teletrack and OTB gained $61,245,505 in volume and $5,399,718 in revenue during this period to provide the State of Connecticut with $37,275,000 in total revenue, a slight increase of $686,412 over 1978.

Since greyhound and jai alai trends were very similar, it appears that excessive competition from other states, plus a serious economic problem in this area, were the chief reasons for their decline.

It is encouraging to note that according to the 1981 Gaming Policy Board's report, serious efforts are being made to remedy this situation.

RECAP OF PARI-MUTUELS WAGERING IN DELAWARE (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Delaware Park	63	358,506	44,127,517	709,594.00	700,437	123.08
Total	63	358,506	44,127,517	709,594.00	700,437	123.08
Harness Racing						
Brandywine	86	537,486	41,166,316	469,428.81	478,678	76.59
Dover	100	159,464	12,520,297	93,902.44	125,203	78.51
Harrington	65	109,349	7,729,858	57,973.86	118,921	70.68
Totals	251	806,299	61,416,471	621,305.11	244,687	76.17
Miscellaneous Revenue				176,216.04		
STATE TOTALS	314	1,164,807	105,543,988	1,507,115.15	336,127	90.61

Delaware Park, the only thoroughbred track in Delaware raced 13 more days in 1981 than in 1978. Attendance was down by 1,313 fans per day, or 19.29%. The handle was also down $93,000 per day, or 11.74%. Per capita was up $6.44, or 5.52%. Total revenue increased only $31,397.00 with the extra days of racing.

Harness racing had a huge drop in volume in 1981. Although they raced only 43 days less than in 1978, on a statewide basis, Brandywine, the track with the much larger average, raced only 86 days in 1981 as compared to 136 days in 1978. In other categories, attendance per performance was down 4.97%, average handle per day down 9.86%, and even per capita down 5.16%. Revenue collected suffered accordingly. All these factors had to be affected by the shorter season at Brandywine.

RECAP OF PARI-MUTUELS WAGERING IN FLORIDA (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds							
Calder	105		699,700	108,633,191	2,766,199.30	1,034,602	155.25
Gulfstream	50		576,345	103,531,722	3,346,402.10	2,070,634	179.63
Hialeah	65		418,907	73,643,699	1,975,257.00	1,132,980	175.79
Tampa Bay	74		257,666	26,298,780	135,351.70	355,389	102.06
Tropical Park	50		363,237	60,194,404	1,598,326.48	1,203,888	165.71
Totals	344		2,315,855	372,301,796	9,821,536.58	1,082,273	160.76
Quarter horses							
Gator Downs	50		124,185	10,171,157	66,877.83	203,423	81.90
Totals	50		124,185	10,171,157	66,877.83	203,423	81.90
Jai Alai							
Dania	109	50M	661,782	41,389,076	2,972,265.31	260,309	62.[illegible]
Florida	107	52M	370,024	28,060,891	1,956,906.08	176,484	75.43
Fort Pierce	112	59M	224,844	15,180,574	993,743.46	88,775	67.51
West Palm Beach	228	114M	890,797	59,783,789	4,176,979.42	174,806	67.11
Big Bend	105	20M	129,725	10,037,062	599,348.38	80,296	77.37
Miami	105	54M	722,496	57,344,858	4,127,840.16	361,917	79.64
Ocala	110	57M	246,650	17,420,704	1,123,084.38	104,316	70.62
Melbourne	104	50M	226,500	15,046,954	997,326.05	97,707	66.43
Summer Inc.	145	68M	774,516	61,532,505	4,379,247.54	288,885	79.44
Summersport Ltd.	52	—	198,381	13,015,692	931,992.98	250,302	65.60
Tampa	105	54M	632,470	41,518,165	2,974,259.80	261,121	65.64
Daytona Beach	130	51M	375,268	24,886,006	1,709,634.40	137,492	66.31
Totals	1412	629M	5,453,453	385,416,276	26,942,627.96	188,837	70.67
Harness Racing							
Pompano	105		501,500	49,338,557	795,463.24	469,891	98.38
Totals	105		501,500	49,338,557	795,463.24	469,891	98.38
Greyhounds							
Tampa	101	53M	776,701	79,730,628	6,214,536.62	517,731	102.65
Bayard	92	19M	250,793	25,374,072	1,904,948.27	228,595	101.17
Biscayne	156	83M	1,294,137	154,959,245	12,161,016.80	648,365	119.73
Bonita Springs	108	51M	417,072	33,571,824	2,581,371.91	211,144	80.49
Daytona Beach	101	50M	392,359	31,727,702	2,404,235.83	210,117	80.86
Palm Beach	105	54M	544,489	48,704,208	3,748,046.75	306,316	89.44
Hollywood	103	54M	1,037,470	107,145,337	8,426,211.90	692,454	103.27
Jacksonville	105	[illegible]	436,018	41,782,058	3,131,509.06	296,327	95.92
Jefferson Co.	104	21M	172,052	14,619,750	1,060,460.91	116,958	84.97
Key West	105	20M	64,508	5,050,576	248,054.27	40,405	78.29
Orange Park	105	36M	413,817	42,470,795	3,238,553.30	301,211	102.63
Pensacola	104	58M	253,748	22,855,784	1,676,406.79	141,085	90.07
St. Petersburg	101	53M	1,014,477	95,235,886	7,514,406.25	618,415	93.87
Sanford-Orlando	105	54M	519,998	49,361,688	3,804,460.53	310,451	94.92
Sarasota	101	52M	455,359	45,656,532	3,503,025.33	298,409	100.26
Seminole	50	23M	134,113	13,382,818	1,010,698.85	183,326	99.78
Ebro	106	40M	200,793	17,948,120	1,311,637.35	122,932	89.11
West Flagler	48	27M	301,977	36,329,392	2,842,192.91	[illegible]	123.11
Totals	1800	784M	8,679,881	865,906,415	66,841,354.53	[illegible]	99.76
Miscellaneous Revenue					6,392,811.07		
STATE TOTALS	3711	1413M	17,074,874	1,683,134,201	110,061,171.21	328,481	98.57

Florida was again the only state in the United States licensing all five sports for pari-mutuels wagering in 1981. The same five thoroughbred tracks were in operation as in 1978. Number of racing days at these locations increased by only 15 days, from 329 to 344. Attendance per performance was down 645 customers per day or 8.74%. Average handle per day was also down by $21,185 or 1.92%. Per capita wagering, however, was up by 7.46% to $160.76.

Gator Downs was still the only quarter horse track in Florida. They raced 50 days in 1981 as opposed to 45 in 1978. Attendance, handle and per capita were all up slightly, attendance by 50 customers per day, daily average by $13,708 or 7.22% and per capita by 5.1%. Although gains were small, the results are encouraging.

Jai alai shows two more meetings than in 1978, but these were held at existing frontons, no new ones having been built. Performances increased by 462 but attendance per performance was down by 8.43%, very close to the thoroughbred figure. Daily average, however, was up $6,590, or 3.61%. This was made possible by the per capita increase of $8.20.

Only one harness horse track was in operation in 1981 as opposed to two in 1978; Seminole Park having converted to dog racing this period. Pompano raced the same number of days (105). Attendance was down by 29,420 for the 105 day period, but average daily handle was up $30,211 or 6.8% and per capita by $11.42 or 13.13%.

Greyhound racing followed the same trends as the other sports with the slight exception of the one quarter horse track. Performances were decreased by 85 to 2584. Attendance was down 5.27%, but again, the average handle was up 7.38% and per capita up $11.75 or 13.35%.

Encouraging was the fact that with attendance down in 1981, the State increased their revenue from pari-mutuels sources over seven (7) million dollars above the 1978 figure for a total of $110,861,171.21.

RECAP OF PARI-MUTUELS WAGERING IN IDAHO (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Coeur D'Alene	15	23,665	2,164,624	84,195.72	144,308	91.46
Les Bois Park	34	104,050	4,748,586	168,205.48	139,664	45.63
Totals	49	127,715	6,913,210	252,401.20	141,086	54.12
Quarter horses						
Coeur D'Alene	4	6,308	330,749	13,706.28	82,687	52.43
Les Bois Park	16	48,960	1,581,668	79,155.52	98,854	32.30
Totals	20	55,268	1,912,417	92,155.52	95,621	34.60
Revenue (Fairs)				61,302.00		
STATE TOTALS	69	182,983	8,825,627	405,858.72	127,908	48.23
Fairs						
Pocatello	30	39,750	1,266,141	35,367.00	42,205	31.85
Gem Co.	6	5,498	184,566	4,420.00	30,761	33.56
Jerome Co.	4	NA	92,841	2,130.00	23,210	NA
Rupert	4	5,292	153,715	4,156.00	38,429	29.04
Cassia Co.	3	NA	71,533	1,716.00	23,844	NA
Oneida Co.	3	5,400	107,620	2,956.00	35,873	19.92
Eastern Idaho	5	9,520	284,338	9,045.00	56,868	29.86
Magic Valley	3	NA	66,374	1,512..00	22,125	NA
Totals	58	NA	2,227,128	61,302.00	38,399	NA

Idaho's gains would not look impressive if volume was the criteria, but averagewise, this state has made huge gains since 1978.

While racing nine less days, the average daily attendance was up 15.53%; the daily handle up 55.39%; and per capita wagering up 34.48%.

Some of the larger fairs were included in the 1978 averages, but even with this consideration, the increases are extremely good. The bottom line is the fact that revenue collected jumped from $136,261.91 in 1978 to $405,858.72 in 1981.

RECAP OF PARI-MUTUELS WAGERING IN ILLINOIS (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Arlington	120	1,381,789	192,385,631	14,295,645.00	1,603,214	139.23
Balmoral	67	222,126	27,946,950	1,537,752.00	417,119	125.82
Hawthorne	87	785,776	116,700,165	8,387,330.00	1,341,381	148.52
Sportsman Park	72	797,454	117,346,343	8,853,985.00	1,629,810	147.15
Fairmont	160	793,652	82,225,446	4,582,845.00	513,909	103.60
Totals	506	3,980,797	536,604,535	37,657,557.00	1,060,483	134.80
Harness Racing						
Maywood	153	926,622	134,531,611	9,036,921.00	879,292	145.18
Balmoral	109	404,567	50,872,967	2,832,951.00	466,724	125.75
Sportsmans Park	117	1,332,053	169,621,625	12,511,668.00	1,449,757	127.34
Duquoin	4	11,012	453,466	18,904.00	113,466	41.22
Aurora	12	57,485	4,841,519	255,231.00	403,460	84.22
Fairmont	87	288,282	30,965,967	1,588,896.00	355,931	107.42
Quad City	150	468,513	39,234,335	1,989,632.00	261,562	83.74
Hawthorne	63	477,328	70,935,346	4,997,928.00	1,125,958	148.61
Totals	695	3,965,862	501,457,236	33,232,131.00	721,521	126.44
Miscellaneous Revenue		-		1,683,827.00		
STATE TOTALS	1201	7,946,659	1,038,061,771	72,573,515.00	864,331	130.63

Thoroughbred tracks in Illinois raced 47 more days in 1981 than 1978. Trends in all categories were up. Daily average attendance by 5.13%, daily handle by 11.32% , and per capita wagering by 5.89%. Although average handle and per capita increases were slightly lower than the national average, the attendance increase was slightly higher. Revenue to Illinois increased by $1,213,369 in 1981 over 1978.

Harness racing did not fare so well. There were 139 more racing days in 1981, but per capita was only up ½ of 1 per cent, average daily handle was down by 9.88% and worst of all, average attendance was down by 10.33%. Revenue, even with the 47 extra days, was down $3,060,971 in 1981 over 1978.

Combining both sports, 186 more racing days were held in 1981; average attendance was down 3.68%; average handle was down .57% and per capita wagering was up 3.22%. The results were not drastic, but revenue for the year was $1,326,183, less than 1978—even with 186 more performances.

RECAP OF PARI-MUTUELS WAGERING IN KENTUCKY (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Latonia	124	499,481	63,082,164	2,996,403.00	508,727	126.20
Keeneland	31	386,365	35,180,489	1,671,073.00	1,134,854	90.93
Churchill Downs	79	962,713	106,005,045	5,325,240.00	1,341,836	110.11
Ellis Park	59	305,647	32,718,766	1,354,141.00	554,555	107.04
Totals	293	2,154,706	236,986,464	11,246,857.00	808,828	109.98
Harness Racing						
Latonia	67	99,949	8,842,760	445,962.00	131,981	88.47
Lexington Trots	44	128,665	6,981,633	353,805.00	158,673	54.26
Louisville Downs	137	415,162	31,029,301	1,571,060.00	226,491	74.74
Audubon	102	117,954	10,671,133	536,797.00	104,619	90.46
The Red Mile	8	24,072	1,061,972	54,139.00	132,747	44.11
Totals	358	785,802	58,586,799	2,961,763.00	163,650	74.55
STATE TOTALS	651	2,940,508	295,573,263	14,208,620.00	454,030	100.51
Fairs						
Mayfield						
Paducah						
Bardstown						
Totals			57,839			

Thoroughbred racing in Kentucky had 21 more racing days in 1981 than in 1978, average attendance was up .86%, daily handle was up 2.7%, and per capita wagering up 1.81%. All were less than the national average but at least did not decline. The slight increases and the 21 extra racing days provided $1,071,864.67 more in revenue.

Harness racing was down in every category except per capita wagering, which was up 1.2%, but not by very much. Average attendance was down 4.27%, and average handle down 3.09%. However, the revenue held pretty even, decreasing by only $103,299 in 1981 over 1978.

Kentucky, over the three year period, has held very even in every category when both sports are combined. No quarter horse racing was held in 1981 but pari-mutuels wagering was introduced on harness racing at three fairs for the first time. Although the combined handle of the three tracks was only 57,839, there was an increase of 300% in the number of horses available to race at each fair. The practice should also be a good way to educate new fans to pari-mutuels wagering and create a fresh group of potential fans for commercial tracks.

RECAP OF PARI-MUTUELS WAGERING IN LOUISIANA (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Louisiana Downs	105	1,127,452	178,160,747	9,225,033.94	1,696,769	158.02
Fairgrounds	96	766,954	129,944,189	6,297,438.94	1,353,585	169.43
Jefferson Downs	105	464,328	56,093,535	2,172,292.19	534,224	120.81
Evangeline Downs	93	355,377	43,796,445	1,578,333.47	470,929	123.24
Delta Downs	83	251,255	36,415,164	1,220,249.61	438,737	144.93
Totals	482	2,965,366	444,410,080	20,493,348.15	922,013	149.86
Quarter horses						
Delta Downs	90	240,707	30,219,918	824,640.00	335,777	125.54
Totals	90	240,707	30,219,918	824,640.00	335,777	125.54
STATE TOTALS	572	3,206,073	474,629,998	21,317,988.15	829,773	148.04

Louisiana had 56 less thoroughbred racing days in 1981 than in 1978, but the increases in all categories were far above the national average. Attendance per performance was up 16.07%; daily handle up 43.75% and per capita wagering 27.83%. The rapid growth of Louisiana Downs undoubtedly helped make these figures possible, but the other four tracks also showed remarkable growth. Especially gratifying is the fact that almost 3½ million more dollars were paid in revenue to Louisiana in 1981 than in 1978.

Quarter horses followed closely the gains, percentage wise, as the thoroughbreds. It will be almost impossible for the state to maintain this growth trend, but it should give other states encouragement that it is possible, even with our sagging economy.

RECAP OF PARI-MUTUELS WAGERING IN MAINE (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Harness Racing						
Scarborough Downs	140	NA	15,860,266	582,738.89	113,288	NA
Lewiston Raceway	92	NA	7,713,789	273,174.08	83,846	NA
Bangor Raceway	43	NA	2,705,943	93,020.79	62,929	NA
Totals	275	450,000*	26,279,998	948,933.76	95,564	58.39*
Revenue (Fairs)				116,065.83		
Miscellaneous Revenue				250,952.31		
STATE TOTALS	275	450,000*	26,279,998	1,315,951.90	95,564	58.39*
Fairs	54	NA	3,492,901	116,065.83	64,683	NA

*Estimated

The only commercial tracks operating in Maine were harness tracks. No accurate attendance figures were available in 1981 so percentages would be of little value in most categories, but average daily handle was up 16.01% and the revenue amounted to $162,578.82 more in 1981 than in 1978 with an increase of only 22 days of racing. It appears that Maine is at least holding its own in regards to the pari-mutuels industry.

RECAP OF PARI-MUTUELS WAGERING IN MARYLAND (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Bowie	60	464,151	65,532,948	2,680,297.57	1,092,216	141.18
Pimlico	108	955,625	118,767,437	4,886,672.57	1,099,698	124.28
Laurel	61	489,389	67,389,201	2,727,133.91	1,104,741	137.70
Marlboro	36	243,127	32,094,775	1,312,676.30	891,522	132.00
Timonium	42	229,252	25,695,948	714,846.02	611,808	112.08
Miscellaneous Revenue				264,000.00		
Totals	307	2,391,544	309,480,309	12,585,626.37	1,008,079	129.94
Harness Racing						
Freestate	95	462,869	43,181,312	2,422,524.61	454,540	93.29
Rosecroft	85	366,682	37,170,465	2,080,378.40	437,300	101.36
Ocean Downs	74	118,573	8,707,638	261,229.14	117,671	73.43
Miscellaneous Revenue				6,375.00		
Totals	254	948,124	89,059,415	4,770,507.15	350,628	93.93
Revenue (Steeplechase)				55,606.00		
Miscellaneous Revenue				1,766,184.67		
STATE TOTALS	561	3,329,668	398,539,724	19,177,924.19	710,409	119.69
Steeplechase	3	41,786	695,075	55,606.00	231,692	16.63

Maryland thoroughbred statistics show conflicting trends. Five more racing days were held in 1981 over 1978, per capita was up 14.48% and daily average also up 6.84%. However, average attendance was down 6.68% and total revenue was down $2,687,670.43 from 1978.

Comparisons of 1978 to 1981 of harness racing in Maryland shows scarcely any change. With 2 less days of racing, average attendance increased by 10 patrons, the average handle was up 3.24%, and per capita betting increased 6.9% in 1981. On the other hand, revenue decreased only $477,350.79.

RECAP OF PARI-MUTUELS IN MASSACHUSETTS (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds							
Suffolk Downs	227		1,581,876	210,506,754	10,793,293.08	927,343	133.07
Totals	227		1,581,876	210,506,754	10,793,293.08	927,343	133.07
Harness Racing							
Foxboro	176		591,560	53,961,278	1,798,028.14	306,61[illegible]	91.22
Totals	176		591,560	53,961,278	1,798,028.14	[illegible]	91.22
Greyhounds							
Revere	285	—	1,411,891	151,510,098	13,567,253.48	531,614	107.31
Raynham	132	133M	648,371	65,098,814	4,672,187.25	245,656	100.40
Taunton	35	100M	297,297	30,541,796	2,087,714.21	226,236	102.71
Totals	452	233M	2,357,559	247,150,708	20,327,154.94	360,804	104.83
Revenue (Fairs)					1,659,552.81		
STATE TOTALS	855	233M	4,530,995	511,620,740	34,578,028.97	470,240	112.91
Fairs							
Thoroughbreds	28		221,757*	13,715,446	1,408,139.03	489,837	61.84
Harness Racing	10		28,250	2,620,563	90,808.65	262,056	92.76
Greyhounds	10		26,633	2,314,908	160,605.13	231,491	86.91
Fair Totals	48		276,640*	18,650,917	1,659,552.81	388,561	67.41

M Denotes matinees
*Estimated

Our 1978 figures for thoroughbreds included 38 days of Fair racing, so we are comparing Suffolk Downs figures for comparative purposes for both years. This reveals strong gains in all areas, except revenue. Average attendance was up 12.34%, quite above the national average; average handle was up 37.21% and per capita also up 22.13%. This is a very encouraging sign with the high level of competition in that area.

Harness racing at Foxboro shows exactly the opposite trend. Attendance was down 3.91%; average handle down 5.51% and per capita betting also down 1.68%. Although other areas have shown greater declines in handle and attendance, this is one of the few spots to also be down in per capita wagering. Revenue generated was also down a considerable amount.

The increases in greyhound racing are exceptionally good, especially when it is realized that there were 133 more matinees held in 1981 and 58 fewer night sessions. Even so, the average attendance was up over 1978 by 5.84%, average handle increased by 23.83% and per capita was also up 17.54%. Increased revenue from this source was $5,163,670.14 more than in 1978, and more than made up for the revenue declines from other categories.

RECAP OF PARI-MUTUELS WAGERING IN MICHIGAN (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Detroit	84	432,627	60,807,915	3,844,393.00	723,904	140.73
Hazel Park	112	634,059	90,958,152	5,768,549.00	812,126	143.45
Totals	196	1,066,686	151,766,067	9,612,942.00	774,317	142.27
Quarter horses						
Glendale	41	13,164	689,414	39,458.00	16,815	52.37
Totals	41	13,164	689,414	39,458.00	16,815	52.37
Harness Racing						
Hazel Park	84	454,187	62,796,030	4,061,900.00	747,572	138.26
Northville	141	447,505	64,322,579	4,140,003.00	456,189	143.73
Jackson	77	146,849	13,380,084	753,350.00	173,767	91.11
Wolverine	84	423,768	60,987,907	3,955,207.00	726,047	143.91
Saginaw	65	176,317	14,770,445	953,491.00	227,238	83.77
Totals	451	1,648,626	216,257,045	13,863,951.00	479,506	131.17
Miscellaneous Revenue				695,194.60		
STATE TOTALS	688	2,728,476	368,712,526	24,211,545.60	535,919	135.13

Michigan's thoroughbred tracks suffered serious declines since 1978. Average attendance was down 12.96%, average handle 13.05%, and revenue was less by $4,281,711 in 1981. Only per capita wagering was up, by 4.74%. The big factor is the especially critical economic conditions in this state; but the big reduction in revenue was also partly, due to the restructuring of the divisions of commissions between the tracks and the state. Percentages of takeouts were also reduced in some areas to try to stimulate the volume of wagering.

One small quarter horse track was still in operation in 1981, although down 23.75% in average attendance, 42.45% in average handle, 21.62% in per capita, and generating $16,450.00 less in revenue in 1981 when compared with 1978.

Harness racing was also down, but not quite as badly as the thoroughbreds. Average attendance was down 11.47%, and average handle 10.05%, but per capita still showed a small gain of 1.59%. Surprisingly the extra 49 days in 1981 produced enough revenue to show a gain of $1,169,669 over 1978.

Hopefully, with the co-operation of the state and a reversal of the economic condition in Michigan, the downward trend will reverse itself in the future.

RECAP OF PARI-MUTUELS WAGERING IN MONTANA (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Great Falls	24	NA	2,329,352	23,293.52	97,056	NA
Billings	39	NA	5,363,811	53,638.11	137,534	NA
Totals	63	NA	7,693,163	76,931.63	122,114	NA
Revenue (Fairs)				26,357.87		
STATE TOTALS	63	NA	7,693,163	103,289.50	122,114	NA
Fairs	49	NA	2,635,787	26,357.87	53,792	NA

The thoroughbred meetings in Great Falls and Billings were included with the small fairs in 1978's figures, so we have no solid basis for percentage comparisons, except for total volume and revenue. Attendance figures are not available either, so these cannot be accurately measured.

However, the total handle for all pari-mutuels in 1981 was up $2,268,108 over 1978 but the revenue was down $27,383.82. Actual racing days at all facilities were up from 102 in 1978 to 112 in 1981.

RECAP OF PARI-MUTUELS WAGERING IN NEBRASKA (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Fonner Park	40	197,628	23,779,717	1,193,151.75	594,493	120.32
Aksarben	65	992,479	114,604,139	6,012,059.00	1,763,141	115.47
Atokad	50	92,720	5,655,569	249,626.45	113,111	61.00
Lincoln	50	263,540	29,176,653	1,478,354.65	583,533	110.71
Columbus	26	89,739	8,153,218	380,037.60	313,585	90.85
Totals	231	1,636,106	181,369,296	9,313,229.45	785,148	110.85
Quarter horses						
Broken Bow	12	8,745	287,943	1,451.50	23,995	32.92
Deshler	15	17,720	600,527	3,291.00	40,035	33.88
Hastings	16	19,420	791,109	4,203.00	49,444	40.73
Totals	43	45,885	1,679,579	8,947.50	39,060	36.60
STATE TOTALS	274	1,681,991	183,048,875	9,322,176.95	668,062	108.82

Nebraska thoroughbred tracks overcame a 11.05% decrease in average attendance in 1981 compared with 1978 to post a 2.97% increase in average handle. This was largely due to an increase in per capita of 15.77%. The slight increase in handle and the 37 extra days of racing in 1981 combined to provide $1,876,826.75 more revenue than in 1978.

There were three quarter horse tracks in 1981 as opposed to two in 1978. There were 9 more racing days in 1981 and quarter horses followed the trend of the thoroughbreds in Nebraska, showing a decrease in average attendance of 3.43% but large increases of 24.29% in handle, and 28.73% increase in per capita. Revenue increased from $3,601.80 in 1978 to $8,947.50 in 1981, almost a 150% increase. Small numbers, but definitely going in the right direction.

RECAP OF PARI-MUTUELS WAGERING IN NEVADA (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Greyhounds							
Las Vegas Downs	258	62M	275,942	17,078,054	538,325.62	53,369	61.89
Totals	258	62M	275,942	17,078,054	538,325.62	53,369	61.89
Jai Alai							
MGM Grand	115		95,993	2,985,717	89,571.51	25,303	31.10
Totals	118		95,993	2,985,717	89,571.51	25,303	31.10
Revenue (Fairs)					3,077.35		
STATE TOTALS	376	62M	371,935	20,063,771	630,974.48	45,308	53.94
Fairs							
Ely	4		1,622*	98,299	982.99	24,575	N.A.
Elko	4		3,082*	209,436	2,094.36	52,359	N.A.
Totals	8		5,704*	307,735	3,077.35	38,467	N.A.

*Estimated

Nevada has little to work with in way of comparisons. Greyhounds were not racing in 1978, and have been shut down once again because play was not as great as was expected. Plans are to open again as soon as possible.

Jai alai opened again after fire destroyed the fronton in Las Vegas. Reno had a fronton operating in 1978 but it too was closed because business was poor. For the short time the fronton was open in Las Vegas in 1981, the average attendance was down 28.18% from 1978 and the average handle was down 30.16%. Per capita was about the same. These are not very fair comparisons and 1982 may see the fronton start back to the 1978 figures.

RECAP OF PARI-MUTUELS WAGERING IN NEW HAMPSHIRE

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Harness Racing							
Hinsdale	51		66,827	4,139,676	98,213.30	81,170	61.94
Totals	51		66,827	4,139,676	98,213.30	81,170	61.94
Greyhounds							
Hinsdale	188	89M	210,341	19,003,020	1,295,729.92	68,603	90.34
Lakes Region	105		80,541	4,190,318	159,698.75	39,908	52.02
Seabrook	220	230M	835,931	68,768,887	6,447,348.80	152,820	82.26
Totals	513	319M	1,126,813	91,962,225	7,902,777.47	110,532	81.61
Revenue (Fairs)					23,929.31		
STATE TOTALS	564	319M	1,193,640	96,101,901	8,024,920.08	108,836	80.51
Fair							
Rochester	9		32,000*	825,611	23,929.31	91,735	NA

*Estimated

The fact that Rockingham held lengthy thoroughbred and harness meets in 1978 and not in 1981, makes comparisons for those years of little value in New Hampshire in regard to horse racing.

Hinsdale, the only harness track racing in 1981 was up 1.08% in attendance, 23.2% in handle, and 21.83% in per capita over 1978.

Greyhound racing held 119 more performances in 1981 than in 1978, but 116 of these were matinees, and makes comparative figures misleading. Average attendance was down 26.09%, average handle down 30.05% and per capita down 5.37%. However, the added performances kept the revenue received by New Hampshire close to the 1978 total.

RECAP OF PARI-MUTUELS WAGERING IN NEW JERSEY (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Atlantic City	75	514,271	59,755,908	731,985.18	796,745	116.19
Monmouth Park	110	1,074,054	155,837,786	5,792,947.31	1,416,707	145.09
N. J. Sports & Expo. Auth.	101	1,358,797	192,634,526	1,325,808.01	1,907,273	141.76
Totals	286	2,947,122	408,228,220	7,850,740.50	1,427,371	138.51
Harness Racing						
Freehold	134	455,369	57,404,374	1,960,759.95	428,391	126.06
Atlantic City	133	416,571	53,875,703	2,291,212.73	405,080	129.33
N. J. Sports & Expo. Auth.	182	2,930,555	449,066,798	3,094,372.11	2,467,400	153.23
Totals	449	3,802,495	560,346,875	7,346,344.79	1,247,989	147.36
Miscellaneous Revenue				6,601.12		
STATE TOTALS	735	6,749,617	968,575,095	15,203,686.41	1,317,789	143.50

New Jersey thoroughbred tracks raced 4 more days in 1981 than in 1978. Average attendance was down 9.66%, but a 14.27% increase in per capita wagering kept the average handle up by 3.22%. Changes in divisions of commissions, to help tracks through a period of declining attendance, was primarily responsible for a decrease in revenue of $3,654,642.00 in 1981 as compared to 1978.

Harness racing trends were a little more favorable than the thoroughbreds. Average attendance was down only 4.39% and a 20.56% increase in per capita helped make the average handle up 15.27% in 1981 over 1978. With 31 more racing days, the decrease in revenue was only $49,239.79.

New Jersey is another state that is exploring ways to get their fair share of the wagering dollars in a very competitive area.

RECAP OF PARI-MUTUELS WAGERING IN NEW MEXICO (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
La Mesa Park	31	53,459	6,993,664	31,555.81	225,602	130.82
Ruidoso Downs	32	166,659	19,636,835	527,738.78	613,651	117.82
Santa Fe Downs	51	172,590	18,923,203	216,523.63	371,043	109.64
Albuquerque State Fair	12	116,976	11,209,099	170,477.42	934,092	95.82
Sunland Park	61	235,094	17,627,977	333,453.90	288,983	74.98
Totals	187	744,778	74,390,778	1,279,749.54	397,812	99.88
Quarter horses						
La Mesa Park	28	53,459	5,386,072	28,502.00	192,360	100.75
Ruidoso Downs	38	166,658	20,443,859	626,700.33	537,996	122.66
Santa Fe Downs	19	69,033	5,700,463	80,665.90	300,024	82.57
Albuquerque State Fair	5	48,740	4,085,838	71,032.22	817,168	81.82
Sunland Park	24	92,523	7,148,247	131,194.56	297,844	77.25
Totals	114	430,413	42,764,479	938,095.01	375,127	99.35
Miscellaneous Revenue				3,150.00		
STATE TOTALS	301	1,175,191	117,155,257	2,220,994.55	389,220	99.69

All of New Mexico's tracks hold mixed thoroughbred and quarter horse meetings. According to the number of each type of race run, we attempted to credit each with a proportionate number of racing days for statistical purposes. Because these cannot be exact, we are combining the figures of both to give trend percentages in 1981 compared with 1978.

There were 6 more racing days in 1981 than in 1978. As in most areas, average attendance was down. In this case it was down 13.34%, while per capita was up 36.02% and average handle up 17.87% over 1978.

Total revenue was $702,248.91 less in 1981 than in 1978.

RECAP OF PARI-MUTUELS WAGERING IN NEW YORK (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Aqueduct	171	2,687,564	473,385,855	22,700,502.46	2,768,338	176.14
Belmont	114	2,420,780	350,136,467	16,919,051.65	3,071,373	144.64
Saratoga	24	674,464	67,492,732	2,655,958.15	2,812,197	100.07
Finger Lakes	161	529,836	52,788,846	1,954,898.01	327,881	99.63
Totals	470	6,312,644	943,803,900	44,230,410.27	2,008,093	149.51
Harness Racing						
Batavia	151	401,043	39,040,823	1,244,155.92	258,549	97.35
Buffalo	143	385,272	37,739,079	1,233,550.[illegible]	263,910	97.96
Monticello	182	515,466	49,684,054	1,785,607.63	272,989	96.39
Roosevelt	146	1,290,134	212,269,291	15,749,041.64	1,453,899	164.52
Saratoga	213	636,480	46,329,718	1,253,965.65	217,511	72.79
Vernon	160	485,201	37,585,338	1,273,[illegible]4.21	234,908	77.4[illegible]
Yonkers	164	1,206,662	216,104,493	15,656,578.72	1,317,710	179.09
Syracuse	7	22,849	1,714,297	59,008.86	244,900	75.03
Totals	1165	4,943,107	640,467,113	38,254,997.72	549,286	129.56
Miscellaneous Revenue				11,925,504.01		
STATE TOTALS	1636	11,255,751	1,584,271,013	94,410,912.00	968,381	140.77
OTB			1,505,363,713	145,180,052.00		
Totals Track & OTB			3,089,634,726	239,590,964.00		

RECAP OF OFF TRACK BETTING WAGERING IN NEW YORK (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Aqueduct	171		547,675,025		3,202,708	
Belmont	114		366,674,471		3,216,443	
Saratoga	24		86,872,607		3,619,692	
Finger Lakes	161		32,507,104		201,908	
Totals	470		1,033,729,207		2,199,424	
Harness Racing						
Batavia	151		26,495,511		175,467	
Buffalo	143		25,503,326		178,345	
Monticello	182		24,747,165		135,973	
Roosevelt	146		148,485,946		1,017,027	
Saratoga	213		14,260,726		66,952	
Vernon	160		4,813,547		30,085	
Yonkers	164		150,215,470		915,948	
Syracuse	7		40,223		5,746	
Totals	1166		394,561,914		338,389	
Out of State						
Arlington			8,255,633			
Cable			7,310,015			
Delaware Park			6,758,727			
Gulfstream			11,186,891			
Hialeah			7,452,406			
Keystone			31,781,138			
Special Events*			4,327,782			
Totals			77,072,592			
STATE TOTALS			1,505,363,713	145,180,052.00		

*Pan American Hdcp., Gulfstream Park Hdcp., Flamingo Stakes, Widener, Hialeah Turf, Arlington Million, Prix de L'Arc de Triomphe, Washington, D.C. International.

New York had 11 more racing days at thoroughbred tracks in 1981 than in 1978. As in most states, average attendance was down 7.31%, average handle was up 5.71% and per capita wagering up 14.06% when comparing 1981 with 1978.

Harness racing followed the same pattern, but average attendance was down, 7.31%, average handle was up less (11.84%), resulting in a decline in the average handle of 5.96%. Ten less racing days were held in 1981 than in 1978.

OTB gross handle was up $298,833,445 in 1981 over 1978, an increase of 24.76%.

Total revenue in 1981 from a gross handle of $1,584,271,013 (on track betting) was $94,410,912.00, while the gross handle of $1,505,363,713 (off track betting) produced $145,180,052 in revenue.

Percentage of takeout was reduced by law in 1981 and will probably help to counteract the sagging economy and the increased competition from neighboring states.

RECAP OF PARI-MUTUELS WAGERING IN OHIO (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Beaulah Park	82	320,137	40,821,487	2,940,769.26	497,823	127.51
Thistle Downs	190	862,319	113,296,449	8,053,270.73	596,297	131.38
River Downs	112	567,784	67,243,788	4,694,422.03	600,391	118.43
Totals	384	1,750,240	221,361,724	15,688,462.02	576,463	126.47
Quarter horses						
Beaulah Park	23	37,176	2,981,788	107,662.72	129,643	80.20
Totals	23	37,176	2,981,788	107,662.72	129,643	80.20
Harness Horses						
Northfield	188	599,062	75,271,031	5,066,999.93	400,378	125.64
Lebanon	145	114,347	21,494,006	1,180,198.72	148,235	187.97
Scioto Downs	112	582,028	47,137,385	3,229,890.06	420,870	80.98
Raceway Park	146	409,320	33,005,332	2,109,265.54	226,064	80.63
Totals	591	1,704,757	176,907,754	11,586,354.25	299,336	103.77
Revenue (Fairs)				228,564.74		
STATE TOTALS	998	3,492,173	401,251,266	27,611,043.73	402,055	114.90
Fairs (53)	178	NA	4,279,190	228,564.74	24,040	NA

Thoroughbred racing in Ohio followed the trend in most states. Average attendance was down in 1981 when compared with 1978 by 11.04%. The increase in per capita was up 8.26% but was not enough to keep the average handle from declining 3.69%. The 23 extra days of racing helped increase the revenue in 1981 by $1,186,439 over the 1978 figure.

The one small quarter horse meet at Beaulah Park showed a trend different from that of any other place in the country. Average attendance was up 53.61%; average handle was up 51.7% ; and per capita was down 1.25%. With 5 less racing days in 1981, the revenue was down only $3,719.24 from the 1978 figure. Although the handle was still small, it gave encouragement to the quarter horse interests that their sport is beginning to gain favor with fans in the Midwest.

Harness racing trends were almost identical to those of the thoroughbreds. 1981 average attendance was down 11.71% compared to 1978, per capita was up 9.27% and average handle down 3.54%.

Revenue in 1981 was almost the same as in 1978, even with 20 less racing days.

RECAP OF PARI-MUTUELS WAGERING IN OREGON (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Portland	70	329,513	35,794,114	1,359,670.40	511,344	108.62
Salem	26	132,100	5,872,991	50,053.94	225,884	44.45
Total	96	461,613	41,667,105	1,409,724.34	434,032	90.26
Quarter Horses						
Portland	17	80,019	5,256,203	310,205.62	309,188	65.68
Salem	5	25,400	758,077	9,625.70	151,615	29.84
Total	22	105,419	6,014,280	319,831.32	273,376	57.05
Greyhounds						
Multnomah	82	537,295	46,465,316	3,155,976.55	566,650	86.48
Total	82	537,295	46,465,316	3,155,976.55	566,650	86.48
Revenue (Fairs)				169,566.02		
STATE TOTALS	200	1,104,327	94,146,701	5,075,098.23	470,734	85.23
Fairs	44	NA	8,062,539	169,566.02	183,240	NA

Oregon, like New Mexico, holds mixed thoroughbred and quarter horse meets. For statistical purposes, we have designated numbers of racing days to each type of racing according to the number of races of each, during a meet. They are combined to arrive at a more accurate trend, since slight errors are inevitable in estimating the attendance breakdown.

Combined thoroughbred and quarter horses raced 9 less days in 1981 than in 1978. Oregon followed the national trend by being down 19.56% in average attendance, but up 34.47% in per capita, enabling the average handle to increase 8.34%. These increases in per capita and handle were enough to increase the revenue in 1981 by almost ½ million dollars over 1978.

Greyhound figures in 1981 were very close to those of 1978. There were 3 less racing days in 1981, average attendance was down 2.45%, average handle was up 3.9% and per capita was up 6.51%. Revenue was also up $312,842.88.

Revenue statewide was almost the same in 1981 as in 1978.

RECAP OF PARI-MUTUELS WAGERING IN PENNSYLVANIA (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Keystone	211	1,526,280	199,391,357	11,674,598.62	944,983	130.63
Shamrock	47	228,139	25,308,826	1,448,693.65	538,486	110.93
Penn National	200	1,020,969	96,674,745	5,731,295.26	483,374	94.68
Commodore	79	199,165	16,315,779	970,610.57	206,529	81.92
Totals	537	2,974,553	337,690,707	19,825,198.10	628,847	113.52
Harness Racing						
Liberty Bell	91	380,226	44,225,501	2,654,661.89	485,995	116.31
William Penn	90	386,770	43,149,369	2,585,806.55	479,437	111.56
Washington	150	536,223	51,081,839	3,029,192.69	340,546	95.26
Mountain Laurel	61	174,374	18,919,076	1,146,666.26	310,149	108.49
Pocono	141	314,554	29,520,829	1,733,132.84	209,368	93.74
Totals	533	1,792,147	186,896,614	11,149,460.21	350,650	104.28
Miscellaneous Revenue				968,695.70		
STATE TOTALS	1070	4,766,700	524,587,321	31,943,354.01	490,268	110.05
Fairs (21)			6,246,443			

Thoroughbred racing in Pennsylvania followed the national trend to a lesser degree but still was in line when comparing 1981 figures with those of 1978. 42 less racing days were held, average attendance was down 2.68%, per capita was up 7.8% and average handle was up 4.26%. Revenue increased by $1,131,828.19 in 1981 over 1978.

Harness racing, however, was down quite a bit in 1981 compared to 1978. Average attendance was down 20.16%, average handle down 15.87% and per capita up only 5.35%. Even with 33 more racing days in 1981, revenue was down $1,335,821.38 from 1978.

Revenue statewide was almost identical both years.

RECAP OF PARI-MUTUELS WAGERING IN RHODE ISLAND (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Greyhounds							
Lincoln	272	138M	1,149,556	114,379,142	6,599,495.13	278,974	99.49
Totals	272	138M	1,149,556	114,379,142	6,599,495.13	278,974	99.49
Jai Alai							
Newport	45	16M	132,535	8,567,150	498,398.06	140,445	64.64
Totals	45	16M	132,535	8,567,150	498,398.06	140,445	64.64
STATE TOTALS	317	154M	1,282,091	122,946,292	7,097,893.19	261,032	95.89

Greyhound racing in Rhode Island was one of the few examples of giant gains in 1981 compared to 1978. An increase of 199 performances in 1981 over 1978, 138 of which were matinees, which makes the figures all the more remarkable. Only per capita did not keep pace, up only 1.83%. But average attendance was up 17.71% and average handle up 19.87%. With these gains, plus 199 more performances, $3,798,555.44 more revenue was generated in 1981 than in 1978.

Jai alai presented a very short session in comparison with 1978, 138 less performances to be exact, so the trend may not be all that conclusive. However, average attendance was down 12.16%, average handle down 1.7%, but per capita was up 11.93%. Approximately 25% of 1981's performances were matinees, so this fact might account for these trends.

The long, successful greyhound operation at Lincoln was responsible for an increase of $2,842,287.66 in revenue in 1981 over the 1978 total.

RECAP OF PARI-MUTUELS WAGERING IN SOUTH DAKOTA (1981)

TRACKS	NUMBER OF RACING DAYS		TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds							
Park Jefferson	20		31,660	2,352,526	71,755.46	117,626	74.30
Totals	20		31,660	2,352,526	71,755.46	117,626	74.30
Quarter horses							
Park Jefferson	3		4,744	335,357	10,763.32	111,786	70.69
Totals	3		4,744	335,357	10,763.32	111,786	70.69
Greyhounds							
Sodrac	131	24M	295,006	25,774,268	1,769,553.23	166,286	87.36
Black Hills	127	1M	128,932	7,987,420	465,250.56	62,402	61.95
Totals	258	25M	423,938	33,761,688	2,234,803.79	119,299	79.63
Revenue (Fairs)					36,030.17		
STATE TOTALS	281	25M	460,342	36,449,571	2,353,352.74	119,116	79.17
Fairs (3)	26		35,127*	1,234,986	36,030.17	47,499	35.15

* Estimated

Since South Dakota only held one very short commercial mixed meet of thoroughbreds and quarter horses in 1981 (23 days), trends would be of little or no value.

The greyhounds had 16 more performances in 1981 than was held in 1978, 15 of these being matinees. The decrease in average attendance of 13.15%, plus the increase in per capita of 13.68%, almost kept the average handle on an even keel. Average handle was down only 1.62%.

Total revenue to the state was almost the same both years, a difference of only $31,256.05. 1981 had the slightly larger figure.

RECAP OF PARI-MUTUELS WAGERING IN VERMONT (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Greyhounds						
Green Mountain	136 45M	226,986	17,017,248	1,087,378.85	94,018	74.97
Totals	136 45M	226,986	17,017,248	1,087,378.85	94,018	74.97
Miscellaneous Revenue				32,362.10		
Revenue (Fairs)				16,294.14		
STATE TOTALS	136 45M	226,986	17,017,248	1,136,035.09	94,018	74.97
Fairs	8	NA	NA	16,294.14	NA	NA

Vermont had only one commercial track in operation in 1978 and 1981, the greyhound track at Green Mountain. They held 69 extra performances in 1981, 35 of which were matinees. Statistics show that there was a decline in average attendance of 30.9%, average handle down 27.92%, and per capita was up 4.34%.

It would appear that the tracks's location, which requires long driving distances to attend, would account for these decreases rather than from poor operational procedures. The high fuel costs and other inflationery travel expenses were almost surely the factors causing this trend.

Even with these downward percentages, Vermont realized $177,919.44 more revenue in 1981 than in 1978.

RECAP OF PARI-MUTUELS WAGERING IN WASHINGTON (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Longacres	116	1,150,921	150,949,873	7,683,333.91	1,301,292	131.15
Yakima	72	177,011	16,822,309	608,084.96	233,643	95.[illegible]3
Playfair	76	318,491	25,800,773	1,145,364.43	339,484	81.[illegible]0
Totals	264	1,646,423	193,572,955	9,436,783.30	733,231	117.[illegible]7
Revenue (Fairs)				27,905.23		
STATE TOTALS	264	1,646,423	193,572,955	9,464,688.53	733,231	117.[illegible]7
Fairs	29	60,827	2,170,423	27,905.23	74,842	35.[illegible]8

The trend of the thoroughbreds in Washington presents a very healthy picture. There were 47 more performances in 1981 than in 1978. It was one of the rare instances where an increase in average attendance could be reported (plus 6.3%), the average handle was up 23.35% and per capita also was up 16.03%.

All these positive trends helped to increase the revenue by $1,478,955.61 over the figures reported in 1978.

RECAP OF PARI-MUTUELS WAGERING IN WEST VIRGINIA (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Thoroughbreds						
Charlestown	221	861,371	81,861,463	4,211,866.41	370,414	95.04
Waterford	279	618,687	66,282,574	3,436,707.59	237,572	107.14
Totals	500	1,480,058	148,144,037	7,648,574.00	296,288	100.09
Greyhounds						
Wheeling	296 102M	829,500	93,085,400	5,739,137.66	233,883	112.21
Totals	296 102M	829,500	93,085,400	5,739,137.66	233,883	112.21
Miscellaneous Revenue				109,870.50		
STATE TOTALS	796 102M	2,309,558	241,229,437	13,497,582.16	268,630	104.44

Thoroughbred racing in West Virginia had 42 less racing days in 1981 than in 1978. Average attendance was down 7.18%, average handle down 3.69%, and per capita up 3.74%. The decline in attendance and handle, plus the shorter racing schedule, resulted in $1,872,781.00 less revenue in 1981 than in 1978.

Greyhounds showed an entirely different trend in the state. The track at Wheeling was another location showing remarkable gains from 1978 to 1981. Average attendance was up 29.36%, average handle up 44.17%, and per capita up 11.44%: all this, in spite of 15 more matinees and 4 less night sessions. These gains resulted in $2,205,395.66 more revenue in 1981 than in 1978.

All in all, revenue from all sources was $345,247.66 more in 1981 than in 1978.

RECAP OF PARI-MUTUELS WAGERING IN WYOMING (1981)

TRACKS	NUMBER OF RACING DAYS	TOTAL ATTENDANCE	TOTAL PARI-MUTUELS HANDLE	TOTAL REVENUE TO STATE	DAILY AVERAGE	PER CAPITA
Quarter Horse						
Casper	10	28,556	1,025,110	10,251.00	102,511	35.89
Rock Springs	6	7,800*	266,111	2,661.00	44,352	34.11
Totals	16	36,356	1,291,221	12,912.00	80,701	35.51
Miscellaneous Revenue				8,482.43		
Revenue (Fairs)				2,101.00		
STATE TOTALS	16	36,356	1,291,221	23,495.43	80,701	35.51
Fairs	8	NA	210,105	2,101.00	26,263	NA

*Estimated

The sparse population precluded any large operations in Wyoming, but the short quarter horse meeting at Casper is showing progress even though the average attendance was down 20.35% in 1981 compared to 1978. Average handle was up 10.19% and per capita was also up by 38.35%.

Another small meeting was held for the first time at Rock Springs, but no attendance figures are available. Revenue of $23,495.43 was realized in 1981 from 16 days of quarter horse racing and 8 days of fairs.

PART II

RESULTS OF A SURVEY TO DETERMINE THE CONCLUSIONS OF LAW ENFORCEMENT AGENCIES AS TO THE EFFECTS THAT PARI-MUTUELS FACILITIES HAVE ON CRIME, INFLUX OF UNDESIRABLE ELEMENTS, AND THE SOCIAL AND ECONOMIC IMPACT ON COMMUNITIES HAVING SUCH FACILITIES IN THEIR JURISDICTION.

One of the strongest obstacles faced by those attempting to initiate legalized racing of various kinds or jai alai in areas which have previously prohibited such activity is objections by those who argue that these industries will cause an increase in the crime rate and an influx of an undesirable element in their communities.

It seemed to us that the best way to determine if they had a valid argument was to go to those who should be most knowledgeable about this situation: the law enforcement agencies charged with keeping the peace in these areas.

We prepared a simple questionnaire, which we hoped would get to the heart of the question, and mailed it to both County Sheriff's offices and City Police Departments in all areas of the United States where facilities of this nature are now in operation. The response was not 100%, but it was greater than expected.

In order to get candid answers, we guaranteed that their replies would be kept confidential. The original copies are in a safe place and will not be divulged unless absolute proof of their validity is challenged. Not only are we including every single reply in our statistics, but we are printing the remarks, both good and bad, from each and every answer that we received, after deleting the origin of these replies.

Not only are we listing the results of this questionnaire nationally, but we are dividing the country into six different sections. to give us a better look at whether the objections voiced by those opposed to additional tracks and frontons are valid enough to offset the obvious increase in economic growth and tax relief that these facilities will generate. Page 34 is a copy of the questionnaire with the results tallied nationally. Some answered one or two of the questions but not all three. Thus not all categories will coincide exactly in number. In most cases where such was the case, the remarks will show why one, or more, answer was omitted.

The following pages will give a breakdown of the answers in different sections of the country, and the remarks listed that came from different locations in these areas.

In fairness to those advocating new tracks and frontons, the percentage of remarks added to specific questions was greater from those who felt that these facilities were detrimental than from those who felt them to be an asset. This is a logical reaction, since those in favor probably did not feel they needed to list the reasons for giving a positive answer.

ANY REPLIES RECEIVED AFTER AUGUST 4, 1982 are on file but not included in this report.

SAMPLE OF QUESTIONNAIRE SENT TO INDIVIDUAL LAW ENFORCEMENT AGENCIES.

RACE TRACK CONSULTANT
PARI-MUTUELS MANAGEMENT
BOB AND BARBARA FREEMAN

P.O. BOX 622
HENDERSON, LA. 70517

TELEPHONE
318-228-2028

May 15, 1982

Gentlemen:

Our firm is working with several states considering the possibility of passing legislation for some sort of racing or jai alai, with pari-mutuels wagering, to ease the tax burden now facing them.

The foremost question that arises in states in their position is whether or not these proposed race tracks or frontons will have any effect on the crime rate and influx of undesirable elements in the communities where these proposed sites will be located. And if so, to what degree.

We are making a survey of all law enforcement agencies where legalized wagering is within their jurisdiction. We have prepared a short questionnaire to save your time, should you be kind enough to give your professional observations of how your locality has been affected by businesses of this nature.

1. **Crime rate:** Increased greatly ________
   Increased slightly ________
   No appreciable difference ________
2. **Undesirable element:** Increased greatly ________
   Increased slightly ________
   No appreciable difference ________
3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**
   Detriment to your community ________
   Welcome addition to your area ________
4. **Remarks:**

Thank you in advance for your time and co-operation in helping us gain the much needed information included in the questionnaire.

Yours very truly,

Robert N. Freeman

Robert N. Freeman

RN: bf

NATIONAL SURVEY

1. **Crime rate:**	Increased greatly	13
	Increased slightly	49
	No appreciable difference	55
2. **Undesirable element:**	Increased greatly	13
	Increased slightly	50
	No appreciable difference	54

3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**

Detriment to your community	16
Welcome addition	82

4. **Remarks:**
All remarks are printed under this heading in the individual sections.

NEW ENGLAND

MAINE, VERMONT, NEW HAMPSHIRE, MASSACHUSETTS, RHODE ISLAND, & CONNECTICUT

1. **Crime rate:**	Increased greatly	1
	Increased slightly	10
	No appreciable difference	6
2. **Undesirable element:**	Increased greatly	2
	Increased slightly	8
	No appreciable difference	7

3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**

Detriment to your community	4
Welcome addition	12

4. **Remarks:**

Crime increased after the track was built as it was a small town before. Now it has grown and undesirables come from the larger town across the state line.

Track has been located in ____for approximately 30 years and has shown to be no real problem to the community.

Those elements described in item three of your questionnaire are a detriment to the community—not necessarily in any illegal frame of reference, but rather from a tax basis. Many of the people connected with the local track are seasonal inhabitants of the community. The majority are renters rather than actual home owners, and as such, do not contribute to the tax basis of the community which is primarily dependent on the property tax. The race track pays the local community a set ceiling tax. To put it bluntly—the area in which the track is situated would yield more tax dollars as a modern industrial site rather than its current use.

Our local board of health has had a great deal of trouble in regulating the sanitary conditions of the track. A constant alert must be maintained.

The above are all personal observations rather than official policy of the Sheriff's office. Any further cooperation desired from me will be gladly extended.

Re: #3 There were not a number large enough to determine however, it does appear they, for the most, reside in mobile homes.

Re: #3 Slight detriment to the community.

1. Crime rate: A very slight increase in Motor Vehicle accidents (minor collisions).
   An occasional car stolen from the parking lot.
   Boisterous or drunken persons usually handled by Track Security personnel by eviction from premises and banning future attendance.
2. Undesirable element: No noticeable difference.
3. Families moving into area: not considered detrimental to community although dog pounds being built on private property are not welcome in most areas. Must be closely regulated by town officials.

Appoint a commission of outstanding and honest people and you eliminate all of the above problems.

NEW YORK, NEW JERSEY, MARYLAND, DELAWARE, PENNSYLVANIA, & WEST VIRGINIA

1. **Crime rate:**	Increased greatly	4
	Increased slightly	5
	No appreciable difference	12
2. **Undesirable element:**	Increased greatly	2
	Increased slightly	8
	No appreciable difference	11

3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**

Detriment to your community	0
Welcome addition	18

4. **Remarks:**

Our raceway has little or no undersirable effect upon our community and is an attribute to our economy.

Welcome addition to our area for business. There is a slight increase in the need for police merely by the fact that more people come in the county.
The person attracted to harness racing is not generally a rough lower class person hence few problems are experienced.

A relatively small "Undesirable Element" can cause a considerable increase in crime. If you desire more information feel free to contact me.

Horse owners—OK. Grooms stink!

Track has been here for over 100 years, therefore it is hard to determine the impact. It is also open year round.

Re: #3—Cannot answer.

Distasteful seeing welfare, food stamps and others receiving aid, at the Mutuels windows.

Worthless checks by some horse owners and trainers increased significantly—traffic congestion created imposition on local residents. State Police and local assigned special traffic control.

Not many families moved into the area. The track being in this area sometimes creates traffic problems.

There has been a race track in ________ for 40 years, and our crime rate and undesirables remain about the same. Which is one of the lowest in the country.

Re: #1, 2, & 3 Track has been in existence over 50 years and any comparison of crime rates, etc., would not be relevant at this time.

Re: #3 Unknown.

In response to your inquiry, I am unable to comment on the impact of pari-mutuels facilities in this jurisdiction, in as much as no special studies have been conducted to determine how much, if any, crime increase is attributable to pari-mutuels wagering.

I am in receipt of your letter date 15 May 1982 in which you request specific information from this department regarding the effect of legalized wagering on specific occurrences within any given jurisdiction.

The extremely general nature of your questions, together with the subjective evaluations which they necessitate, cannot, in fairness, be answered with any degree of verifiable accuracy. I regret that I am unable to assist you in your endeavor.

Question #1—While the crime rate increases greatly it is within the confines of the race track property and the community is generally not affected by it. Cases are heard, however, in the local court thereby increasing the court docket.

Question #2—There is an increase in the undesirable element, however, they too are confined to the race track property.

Question #3—Stable hands live on the track property.

OHIO, ILLINOIS, KENTUCKY, & MICHIGAN

1. **Crime rate:**	Increased greatly	0
	Increased slightly	9
	No appreciable difference	10
2. **Undesirable element:**	Increased greatly	0
	Increased slightly	9
	No appreciable difference	10

3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**

Detriment to your community	3
Welcome addition	14

4. **Remarks:**

We do not have sufficient statistical data to properly answer these questions.

Re: #3 Unknown

Tracks have existed here for years and we are unable to make an independent evaluation on the crime rate etc. for that reason.

Re: #3 None available. Pari-mutuels racing—1 week only during County Fair.

The crime rate does increase slightly when we are in the racing season. Most of these crimes are related to thefts occurring on or near the race track. We do not see a significant amount of crime in the community during these periods of time.

Influx of undesirables but many are known and can be neutralized.

We cannot respond intelligently to these questions as we lack a base line and any way to attribute Crime Data specifically to racing without expending scarce manpower and funds.

ALABAMA, LOUISIANA, FLORIDA, AND ARKANSAS

1 **Crime rate:**	Increased greatly	0
	Increased slightly	9
	No appreciable difference	12
2. **Undesirable element:**	Increased greatly	0
	Increased slightly	11
	No appreciable difference	10

3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**

Detriment to your community	1
Welcome addition	16

4. **Remarks:**

Re: #3 Some were a welcome addition and others were a detriment.

This track has aided the overall economy of the area.

Re: #3 No difference observed.

Re: #3 No appreciable effect.

I have reviewed the survey and believe it to be too subjective for this agency to respond to. There are no pari-mutuels establishments within the city limits and any comments made would be mere intuition on our part.

Although there has been a slight increase in Items 1 & 2, we cannot positively relate this crime increase to your area of concern.

Re: #3 No real problem.

Most of these people are lawabiding citizens.

We are unable to factually state whether the pari-mutuels operation has had a good or bad effect on our community, as we do not keep records specific to its impact at this point.

Sporting events with state managed pari-mutuels have been in existence in ____________ for many years and to our knowledge no statistical data exists that will give the answers to the questionnaire.

We know, however, that off-track and other forms of illegal gambling exists in the area only because of the numerous kinds of sporting events that also exist. Problems involving people connected with these activities range from crimes of violence to domestic disputes, but over a long period of time and no known effort has been made to accumulate this information by this category.

Do not wish to participate.

ARIZONA, NEW MEXICO, COLORADO, IDAHO, SOUTH DAKOTA, NEBRASKA, & NEVADA

1. **Crime rate:**	Increased greatly	4
	Increased slightly	12
	No appreciable difference	11
2. **Undesirable element:**	Increased greatly	5
	Increased slightly	10
	No appreciable difference	12

3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**

Detriment to your community	4
Welcome addition	18

4. **Remarks:**

We are sorry to advise you that statistics are not available which would enable us to provide the information you requested.

Re: #3 None available.

Influx of aliens, commit crimes, disappear back to ________. Possibility of organized crime becoming a problem in state. We have enough problems now.

Re: #3 None available. We do not have great numbers of these type people in our area, so it is hard to give you a verified opinion.

Re: #3 Not much help to the community mostly hired out of county and out of state.

Increased demands for police service is greatest increase based on sheer volume versus any particular class/type of people.

Has been an increase in crime but not higher than the increase in population.

Any detrimental effect upon our community is nominal and probably offset by monies spent in the community.

We have no pre-track data to compare.

We are a small community and feel it would change its atmosphere greatly.

Re: #3 Unknown.

Re: #3 In between detriment and welcome addition. Previously I worked in a community with racing and they are a much greater problem because of on-site animal housing.

---

1. Crime rate: The increase is due to minors being at the track and betting. If you are considering allowing a gambling activity in your state, make sure that it is with a stipulation that no minors be allowed on the grounds. We do not have that stipulation here, which presents a problem with juveniles being in the area and attempting to participate in the gambling activities.
2. Undesirable element: This is due to the fact of the type of clientelle that owners and trainers hire to clean stalls and perform menial chores around the track.
3. The only way I can answer your inquiry is to advise you that most of the horse owners already lived in this valley. Therefore, they did not move in just because the sport was located here. Most of the horse owners are well established and successful in their fields and were prior to the track being built. Few outside owners move into this area, as their horses are handled by trainers and moved from track to track by the trainer.

Re: #3 None available—seasonal.

At first there was fear of bad elements but it was minimal and not even thought of now.

Increases the work load for the police department.

There is no appreciable difference in any of the above.

---

1. Crime rate: We believe that organized legal gambling attracts organized crime, therefore as a law enforcement organization we are against any form of legalized gambling. We know for a fact, that during the time horse racing is held in our city that we respond to more disturbances. There also seems to be more bad check cases.
   Remarks: We have seen people at the race track playing the horses that are on welfare, ADC or unemployment. We know that something like this is impossible to control. However, if the temptation was removed maybe some of these people would spend their welfare money on their families rather than the race track.

WASHINGTON, OREGON, & CALIFORNIA

1. **Crime rate:**	Increased greatly	4
	Increased slightly	4
	No appreciable difference	4
2. **Undesirable element:**	Increased greatly	4
	Increased slightly	4
	No appreciab'e difference	4

3. Officials, horse and dog owners, jai alai players and their employees **and their families moving into your area were a:**

Detriment to your community	4
Welcome addition	4

4. **Remarks:**

No comparative study has been done in this area.

No statistics kept.

Re: # 3 Unknown what effect this would have.

We have had pari-mutuels betting for many years. In ________this state legalized other forms of gambling, such as bingo,.raffles, amusement games, card rooms, punch boards, pull tabs, and fund raising events. The race track is the lesser of our gambling problems.

Excessive traffic—required special coordination with county.

Prefer not to comment at this time.

We don't need it here.

Re: #3 Question too broad to answer appropriately.

Don't do it.

The Police Department is not responding to your survey because the answers to your questions would be based upon opinion and could not be substantiated by past experience or statistics.

While the city of ______experiences an appreciable increase in the crime rate and in in-migration of transients and other undesirable elements during the Fair, the Police Department has not done any indepth study to determine whether these increases are attributable specifically to the race track activities or to the County Fair in general.

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EXHIBIT I

NASRC BULLETIN
May 9, 1985

VOLUME 51, NUMBER 19

SAMPLES AND DETECTED DRUGS FOR HORSE RACING IN THE U.S. (1984)

ORIGIN	FLAT			HARNESS			TOTAL	POSITIVE
	SALIVA	URINE	BLOOD	SALIVA	URINE	BLOOD		
ALABAMA								
ARIZONA		2,680	161				2,841	19
ARKANSAS		861					861	1
CALIFORNIA		22,941	27,422		5,590	6,307	62,260	18
COLORADO		2,600					2,600	
DELAWARE		559	559	5,013	3,733	771	10,635	16
FLORIDA		8,745	684		2,473	186	12,088	100
ILLINOIS		6,882	12,852		8,303	11,924	39,961	188
KENTUCKY		4,709	4,735		5,240	5,720	20,424	32
LOUISIANA		12,329	930				13,259	46
MAINE					3,556	1,406	4,962	31
MARYLAND		6,233	6,177		8,025	568	21,003	37
MASSACHUSETTS		5,153	651		2,804	792	9,400	72
MICHIGAN		3,449	393		7,031	695	11,568	67
MONTANA		1,603					1,603	8
NEBRASKA		3,777	221				3,998	3
NEVADA		95	0				95	3
NEW HAMPSHIRE		3,638			1,652		5,290	9
NEW JERSEY		8,332	12,920		12,642	35,739	69,633	136
NEW MEXICO		4,616	9,208				13,824	81
OHIO		8,242	4,485		10,341	9,314	32,382	51
OKLAHOMA		3,268					3,268	20
OREGON		2,089	374				2,463	5
PENNSYLVANIA		10,461	10,938		13,171	53,064	87,634	275
RHODE ISLAND								
VERMONT					82	0	82	0
WASHINGTON		5,474	3,437		45		8,956	32
WEST VIRGINIA		6,222	51				6,273	13
WYOMING		380	428				808	1
	TOTALS	135,338	96,646	5,013	84,688	126,486	448,171	1,274

Notes:

California had 154 phenylbutazone overages.
14 of Louisiana's total were for flunixin.
In Massachusetts, 35 positives for excess phenylbutazone.
In Michigan, 26 phenylbutazone, 15 DMSO, 13 furosemide.
In Pennsylvania, 27 flunixin.

(Continued on page III)

CANADA HORSE RACE SAMPLES

	FLAT			HARNESS				
PROVINCE	SALIVA	URINE	BLOOD	SALIVA	URINE	BLOOD	TOTAL	POSITIVE
ALBERTA		4,312	39		4,674	160	9,185	6
BRITISH COLUMBIA		2,959	56		4,262	228	7,505	12
MANITOBA		2,325	48		2,420	365	5,158	6
NEW BRUNSWICK					2,078		2,078	5
NEWFOUNDLAND					412		412	1
NOVA SCOTIA					4,431	60	4,491	17
ONTARIO		5,528	37		29,696	1994	37,255	65
PRINCE EDWARD ISLAND					2,312		2,312	4
QUEBEC					13,547	1,019	14,566	37
SASKATCHEWAN		1,894	6		1,652	146	3,698	3
	TOTALS	17,018	186		65,484	3,972	86,660	156

GREYHOUND RACE SAMPLES (U.S.)

ORIGIN	SALIVA	URINE	BLOOD	TOTAL	POSITIVE
ALABAMA		2,907		2,907	11 [1]
ARIZONA		10,115		10,115	0
ARKANSAS	969	1,066		2,035	1
COLORADO		5,470		5,470	0
FLORIDA		29,510	1	29,511	5
MASSACHUSETTS		16,572		16,572	22
NEW HAMPSHIRE		16,471		16,471	0
OREGON		2,065	0	2,065	2
RHODE ISLAND		23,269		23,269	5
VERMONT		4,507	0	4,507	0
WEST VIRGINIA		8,666	0	8,666	0
TOTALS:	969	120,618	1	121,588	46

Notes:
1. All Procaine.

MOST COMMONLY FOUND DRUGS, ALL AORC LABORATORIES

Phenylbutazone	793	Dimethyl Sulfoxide	49
Flunixin	126	PEG	31
Furosemide	104	T-61	30
Caffeine	92	Apomorphine	25
Oxyphenylbutazone	85	Theobromine	25
Procaine	85		

Mr. TAYLOR. Thank you.

Mr. Strong, do you have a remark or two? We are going to have to be very brief at this point.

Mr. STRONG. No, I don't have anything to add to that.

Mr. TAYLOR. OK, fine.

I don't have any questions.

I would like to move on to Mr. Chaves.

STATEMENT OF ESQUIPULA CHAVES, GOVERNOR, SANDIA PUEBLO, BERNALILLO, NM, PRESENTED BY FRANK CHAVES, ACCOMPANIED BY DONALD WALKER, MacDONALD-WALKER GROUP

Mr. FRANK CHAVES. I am pleased to be before the committee today giving the testimony for Governor Esquipula Chaves, who is sitting here next to me. Mr. Don Walker of the MacDonald-Walker Group, the investor in our bingo operation, is also seated to the far left. Mr. Walker is the spokesman for the Indian management company SIMCO, who are responsible for the management of our bingo enterprise. We both have brief oral statements we would like for the committee to hear.

We own a successful bingo enterprise which began operations in January of 1984. Our financial and operational success is the result of both parties, SIMCO and Sandia, not violating agreed-upon provisions of our management contract.

That contract gives the Pueblo control over operational policy and operational expenditures as distinct from SIMCO's management responsibilities for daily operations. Our control extends to continuous monitoring of daily operations through my position, which is tribal-owner monitor. The responsibilities of my position are listed in attachment 2 to Sandia's prepared statement and they cover oversight of the bingo games for compliance to the ordinance and management agreement.

Attachment 3 is a control chart listing 24 activities with responsibilities divided between SIMCO management, the Pueblo, and designated individuals.

The financial success of Sandia bingo has had various positive effects on Sandia and nearby communities. Our bingo enterprise is successful because time and careful deliberations were given by the tribal council to the decision to enter into this business.

Attachment 4 to our prepared statement shows the process taken over 1½ years period, at which time evaluation of competing investor proposals led to contract terms desired by the tribe.

Item 6 of attachment 4 lists eight key issues of the management contract such as the Pueblo would have an owner monitor on the premises at all times with complete access to all the books and records and control of paying all expenses.

Our bingo enterprise is operated under sound business practices. Our working relationship with SIMCO is good and leaves internal tribal affairs out of the daily operations of the business.

As a successful bingo operator, Sandia Pueblo supports S. 902 with certain modifications. This bill recognizes the rights of tribes to operate gaming enterprises as long as they are not prohibited by Federal law or State criminal law. The bill is a device for protecting the tribes from the harmful influence of organized crime which we recognize is a nationwide concern.

S. 902 is troublesome because it makes gaming illegal on Indian reservations unless the tribal ordinance or resolution adopted by the tribal government is approved by the Secretary or a regional gaming commission. Such approval is inconsistent with the national policy of self-determination and with evolving standards of Federal-tribal relationships that do not require tribes to submit ordinances or resolutions to the Secretary for approval.

We also urge this committee to be cautious in this legislation where it affects Indian gaming business matters. For example, negotiations between tribes and potential investors and management fees based on percentages of net revenues need to be flexible within limits.

Mr. Walker's testimony has specific examples of the many considerations that go into a decision to invest in and operate a successful reservation bingo enterprise. These conclude my statement, and I would like to turn it over to Mr. Walker, unless you have questions for me.

Mr. TAYLOR. Thank you.

[The prepared statement follows. Testimony resumes on p. 579.]

MR. ESQUIPULA CHAVES
Governor

MR. EDWARD PAISANO
Lt. Governor

MR. JOSE R. TRUJILLO
Treasurer

PUEBLO OF SANDIA

P.O. Box 608
Bernalillo, New Mexico 87004
(505) 867-2876/5021

STATEMENT OF GOVERNOR ESQUIPULA CHAVES
PUEBLO OF SANDIA
BEFORE THE SENATE ELECT COMMITTEE ON INDIAN AFFAIRS
HEARING ON S.902
"THE INDIAN GAMING CONTROL ACT OF 1985"
26 JUNE 1985

Mr. Chairman, I appreciate the opportunity to be here today. My name is Esquipula Chaves; I am Governor of Sandia Pueblo, a federally-recognized tribe located immediately north of Albuquerque, New Mexico. With me is Mr. Frank Chaves, our tribal bingo monitor who will give our testimony today. Also with us is Mr. Don Walker of the McDonald-Walker Group, Inc., who are investors in our bingo enterprise. Mr. Walker is also spokesman for SIMCO (Sandia Indian Management Company) that is responsible for the management of our bingo operation. He has a brief, separate statement for the record of this hearing.

Sandia Pueblo owns "Sandia Indian Bingo," a successful enterprise that began operation in January 1984. Bingo on the Sandia Reservation is carried out under authority of the Sandia Pueblo through an enabling bingo ordinance. A copy of that ordinance and Bureau of Indian Affairs Area Office and Agency approval letters are Attachment I to this statement. The ordinance stipulates that proceeds from the enterprise are for "the support of programs to promote the health, education and general welfare of the Pueblo and Sandia people." Sandia's success is attributable to provisions of a management agreement between the Pueblo and Sandia Indian Management Company (SIMCO), a New Mexico Corporation. The agreement provides that the Pueblo maintain control over operational policy and operational expenditures which is distinct from management's responsibility for daily operations. Sandia's control extends to continuous monitoring of daily operations through a tribal, owner-monitor. The owner-monitor's function (see Attachment II) is to oversee the operation for compliance to the ordinance and management agreement and to generally look after the interests of the Pueblo in all matters concerning Sandia Indian bingo. (Attachment III is a Control Chart listing twenty-four activities and specifying the responsible individual or management or tribal entity.)

Our enterprise (bingo) is responsible for reducing reservation unemployment to about three percent. Tribal members employed by the bingo operation are gaining experience at every level of the operation. Proceeds from the game help to fund tribal government; the Pueblo has generated an enterprise equity of $862,230 to date without federal or tribal financial contribution to enterprise start-up costs. Beyond tribal members, we also employ some eighty-three non-tribal individuals and have paid approximately $1,250,000 in salaries and wages while purchasing $1,236,687 worth of goods and services in the surrounding Albuquerque metropolitan area.

We attribute success of the bingo enterprise to the time and careful deliberation given by the tribal council to the decision to enter into this business. (Attachment IV shows the process taken over a one and one-half year period during which time evaluation of competing proposals led to desired tribal terms used as the basis for negotiation and execution of the final agreement. Item 6 of the attachment lists eight key issues of the management contract, such as "The Pueblo would have an owner-monitor on the premises at all times with complete access to all of the books and records and control of paying all expenses." Attachment V shows the clearance procedure of investors and managers.) As a result, the bingo enterprise operates with sound business practices. A productive, open, working relationship between Sandia and SIMCO was fostered with internal, tribal affairs separated from the daily operation of the business.

Sandia Pueblo supports enactment of HR1920 with desired modifications. It is a bill which recognizes the right of tribes to operate reservation gaming enterprises that are not prohibited by federal law or state criminal law, and it acts as a device to protect tribes from harmful influence or organized crime that we recognize is of nationwide concern.

The troublesome aspect of HR1920 is the provision that makes gaming illegal on Indian lands unless conducted pursuant to a tribal ordinance or resolution adopted by an Indian tribal government and approved by the Secretary of the Interior. Such a provision would be inconsistent with evolving standards of federal-tribal relations that do not rquire tribes to submit ordinances or resolutions to the Secretary for approval. It is particularly so in the 1980's when promoting tribal self-government is a national policy.

We ask that Congress be conservative in legislation affecting Indian gaming business matters. Negotiations between tribes and potential investors and management fees based on percentages of net revenues must be flexible, within limits. SIMCO's testimony provides practical examples of the many considerations that must enter into a decision to invest in and operate a successful reservation bingo enterprise.

Of additional concern to Sandia Pueblo is the need for greater protection of proprietary information such as computer programs and operational procedures manuals which, under this legislation, will be subject to misuse by those vested with authority for regulation of the games and enforcement of the law. We recommend that the legislation contain strong sanctions against misuse of such proprietary information.

This concludes my testimony and my prepared statement. I would be pleased to respond to any questions the committee might have at this time.

ATTACHMENT I

IN REPLY REFER TO:

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ALBUQUERQUE AREA OFFICE
P.O. BOX 8327
ALBUQUERQUE, NEW MEXICO 87108

Tribal Operations

ROUTE TO:
GOV. ______ JRT ______
PB ______ FB ______
EP ______
KB ______
RB ✓
RL ______

Through: Superintendent, Southern Pueblos Agency

MAR 10 1983

Mr. Bernardino Trujillo
Governor, Pueblo of Sandia
P. O. Box 608
Bernalillo, New Mexico 87004

Dear Mr. Trujillo:

We have completed review of the Sandia Pueblo Bingo Ordinance and Tribal Council Resolution No. 83-3, which enacts the Bingo Ordinance. I am pleased to inform you that I am approving your ordinance effective this date.

The Pueblo of Sandia is to be commended for undertaking this endeavor which should help enhance the reservation's economy. Please convey my congratulations to the Tribal Council and your staff for having the foresight to embark on this economic opportunity.

Sincerely,

Area Director

RECEIVED
MAR 17 1983
SANDIA PUEBLO

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
SOUTHERN PUEBLOS AGENCY
P.O. BOX 1667
1000 INDIAN SCHOOL ROAD, N.W.
ALBUQUERQUE, NEW MEXICO 87103

IN REPLY REFER TO:
Real Property
Management

OCT 14 1983

Bernardino Trujillo, Governor
Pueblo of Sandia
P.O. Box 608
Bernalillo, New Mexico 87004

Dear Governor Trujillo:

We have completed review of the Management Agreement between the Pueblo of Sandia and Sandia Indian Management Company which was submitted to this Agency on October 13, 1983, for formal approval by the Bureau of Affairs.

Upon review we note that this Agreement primarily concerns itself with financing, development and management of a bingo operation and defines the scope and extent for accounting of all revenues. With this in mind and upon consultation with the Field Solicitor, we have determined that formal approval of this Management Agreement is not necessary by the Bureau of Indian Affairs.

In as much as you have submitted for approval to the Bureau of Indian Affairs, the Sandia Pueblo Bingo Ordinance which was subsequently approved by the Area Director, Albuquerque Area Office on March 10, 1983; we find that approval of the Ordinance is sufficient approval for the activity to take place within the boundaries of the Pueblo of Sandia.

We further recognize that the Bingo operation is to take place in the building commonly known as the Sandia Indian Industries building. In as much as the industrial building was constructed to improve and enhance the economic development of the reservation, we find that its proposed use as a bingo facility is consistent with the tribe's efforts toward economic development. I, as Superintendent, acknowledge and accept the role that I may be called upon to settle any disputes if it is necessary with respect to section XIV of the Management Agreement. Therefore, we give our approval for the use of this facility.

The Council and the Pueblo of Sandia is to be commended and congratulated for embarking on this ecnomic endeavor which should enhance the Pueblo's efforts to achieve economic self sufficiency.

Sincerely,

Samuel R Montoya
Superintendent

MR. BERNARDINO TRUJILLO
Governor
MR. DOMINGO MONTOYA
Lt. Governor
MR. JOSE R. TRUJILLO
Treasurer

PUEBLO OF SANDIA

P.O. Box 608
Bernalillo, New Mexico 87004
(505) 867-2876/5021

BINGO ORDINANCE

BE IT RESOLVED AND ORDAINED by the Tribal Council of the Pueblo of Sandia:

Section 1. Short Title.

This Act shall be cited as the "bingo ordinance."

Section 2. Purpose.

The purpose of the bingo ordinance is to make lawful and to regulate the conducting of certain games of chance by the authority of the Pueblo of Sandia.

Section 3. Definitions.

As used in the bingo ordinance:

A. **"Bingo"** shall mean that specific kind of game of chance commonly known as bingo, lotto, or guest game, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random, and wherein players pay a sum of money for the use or benefit of one or more of such numbered cards.

B. **"Proceeds"** shall mean receipts from the sale of shares, tickets, or rights in any manner connected with participation in a game of chance or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies, and all other miscellaneous receipts.

C. **"Pueblo of Sandia"** shall mean the tribe of Indians located within the counties of Sandoval and Bernalillo, and within the exterior boundaries of the State of New Mexico, being at its present location since time immemorial, being duly recognized by the Secretary of Interior of the United States of America and other agencies of the

United States of America and other governments, and being organized under the Indian Reorganization Act of June 18, 1934, 25 USC 461, et seq., as a self-governing, independent, sovereign government, its lands presently comprising approximately 22,870.91 acres; sometimes hereinafter called "Pueblo."

D. **"Tribal Council"** shall mean the Tribal Council of the Pueblo of Sandia, which is the recognized governing body of the Pueblo, possessing plenary power over the people, land, and property within the exterior boundaries of the Pueblo.

E. **"Player"** shall mean any person, Indian or non-Indian, and whether a Sandia Pueblo Indian or not, paying some amount of United States currency to the Pueblo or its agent, servant, or employee for admission to and participation in a bingo game and who has a reasonable expectation of receiving a prize if one or more of his cards conform to the designated numbers or symbols on the said card.

F. **"Prizes"** shall mean and refer to any United States currency, cash, or other property or thing of value awarded to a player of a bingo game, or players in a series of bingo games.

G. **"Occasion"** shall mean a single gathering or session at which a series of successive bingo games is played.

H. **"Person"** shall mean a natural person, either Indian or non-Indian, and either a Sandia Tribal member or a non-Sandia Tribal member.

I. **"Premises"** shall mean the room, hall, enclosure, or outdoor area used for the purpose of playing bingo.

J. **"Equipment"** shall mean the receptacle and numbered objects drawn from it; the master board upon which such objects are placed as drawn; the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them; the board or signs, however operated, used to announce or display the numbers or designations as they are drawn; the public address system; and all other articles essential to the operation, conduct, and playing of bingo.

Section 4. Operations.

It shall be lawful for the Pueblo of Sandia, its agents, servants, and employees, to perform, conduct, operate, maintain, or supervise a bingo game or series of bingo games at any premises, within the exterior boundaries of the Pueblo of Sandia Reservation. It shall be unlawful for any other person, corporation, company, firm, or other entity, except the Pueblo of Sandia, to perform, conduct, operate, maintain, or supervise a bingo game or series of bingo games within the exterior boundaries of the Pueblo of Sandia Reservation.

Bingo games may be conducted each and every day of the week and at any hour of the day, except not later than 2:00 A.M. and not beginning a new occasion earlier than the next 10:00 A.M. following.

There shall be no limit as to the prize money or prizes for any single game or occasion.

All persons involved in the conduct of bingo must be bonafide employees of the Pueblo of Sandia or bonafide employees of its agents, servants, or employees.

No person under the age of 21 years shall be allowed to play bingo.

Section 5. Name Tags.

All persons operating or assisting in the operation or conduct of any bingo game shall wear legible tags evidencing their names and the legend and symbol of the Pueblo of Sandia. Tags must be visible and worn or otherwise affixed to all persons operating or assisting in the operation of the bingo games.

Section 6. Proceeds.

All of the proceeds derived from a bingo game, after payment of the prize money, expenses, and fees, shall be collected by the Pueblo of Sandia for the support of programs to promote the health, education and general welfare of the Pueblo of Sandia people, by:

1. Benefiting persons through enhancing the opportunities for religious or educational advancement; relieving or protecting them from suffering or distress; assisting them in becoming contributing and participating citizens in a progressive community; or increasing their comprehension of and participation in the vital community activities of the Pueblo of Sandia;
2. Initiating, performing, or fostering worthy public works or enabling and furthering the construction or maintenance of public structures;
3. Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the Pueblo of Sandia people; acclimating and training tribal members to participate in commercial and business activities; and/or
4. Improving, expanding, maintaining, or repairing real property or fixtures owned by the Pueblo of Sandia.

Section 6. Enforcement.

It shall be the duty of the Pueblo of Sandia to enforce the provisions of this Ordinance and to keep the peace as to all persons on the premises upon which bingo is played, which may be accomplished with the cooperation of other legitimate law enforcement agencies.

NOW, THEREFORE, BE IT RESOLVED that the foregoing Ordinance is hereby enacted by the Tribal Council of the Pueblo of Sandia.

CERTIFICATION

The foregoing Ordinance was considered by the Sandia Pueblo Tribal Council at a duly called meeting and was adopted by the Council with a quorum being present at a meeting held on the 9th day of February, 1983.

Bernardino Trujillo
Bernardino Trujillo, Governor

Attest:

Joan Tsethlikai

ATTACHMENT II

Owner-Monitor

1. **Recognized Need.**

The Owner-Monitor position originated from Pueblo concerns:

a. To Protect its interest in the bingo operation.

b. The need to have one individual responsible for mandatory compliance of management agreement.

c. Because of the nature of the business and the potential for skimming, the Pueblo wanted a representative to ensure that cash controls were devised and implemented.

2. **How Position has Evolved.**

Because the Pueblo's Business Development Technician was intimately and continuously involved in developing the methodology for and in the negotiations of the Management Agreement, the Tribal Council designed the Business Development Technician, Owner-Monitor.

Initially, the Owner-Monitor worked with the designated agent of the management company and tribal attorney to ensure that essential start-up provisions of the management agreement were executed. These provisions included facilities renovation, employment and training, establishing operational accounts and establishing cash control and accounting procedures.

The Owner-Monitor emphasized the importance of and recommended to the Tribal Council to limit its involvement to major policy decisions. This basic understanding still exists and the Owner-Monitor is the main communications conduit and buffer between the Tribal Council and daily enterprise operations.

3. **How Owner-Monitor Oversees Operations.**

a. Control Tools.

(1) The Owner-Monitor has an internal accounting controls manual that details:

- the entrance and exit controls procedure.
- the money room internal accounting controls.
- concession department internal accounting controls.
- the bingo prize payment procedure and internal accounting controls.
- the payroll processing and internal accounting controls.
- the books and records data flow.
- the inventory controls for bingo.

(2) An operations manual that details:

- all job descriptions.
- operational procedures for all departments.
- all operational forms.
- department estimated budgets.

(3) A cash receipts system was devised to minimize the risk of collaboration and to hold all employees handling funds accountable.

b. Checks and Balances.

(1) Owner-Monitor is responsible for reviewing and approving operating expenses.

(2) Owner-Monitor must countersign all enterprise checks with the exception of payroll checks.

(3) Owner-Monitor has access to all books and records of the enterprise.

(4) Owner-Monitor has the authority to initiate action to bring operations into compliance with policies.

c. What to Monitor.

Reviews daily summary reports, over/short reports, admissions door receipt count, and checks for any discrepancies.

Review monthly reports related to average daily attendance, average daily expenditures, prizes paid out, and concession averages for noticable changes which can be attributed to different factors including skimming.

Observe for any departure from operational procedure or changes made by management without first receiving written approval.

Review operational expense approval forms with accompanying invoices, and look for unusual expenses or items purchased, quantities purchased, dates proper billing and question anything unusual prior to approval.

4. Working Relationships.

a. Tribal Council.

On a monthly basis the Owner-Monitor reports on major policy change consideration or approvals, monthly financial reports and discusses any Council concerns.

When directed by the Governor, reports on issues confronting the operation are provided to the Council.

The Owner-Monitor is available to any Councilman at the Governor's office on a daily basis.

b. Governor.

On an as-needed basis, the Owner-Monitor confers with the Governor and Lieutenant Governor on matters of importance, discuss proposed changes, major operational events and the general condition of the enterprise.

The Governor, Lieutenant Governor, and Owner-Monitor confer on issues that should go before the full Council.

Legal issues always require the involvement of the Governor and Tribal Attorney.

c. Agent for Management Company (SIMCO).

Under the Management Agreement, "one of the individual principals of Contract-Manager, . . . , shall be present in the vicinity of the operation a minimum of 50% of the time." In addition, individual principals of the agreement as well as the corporate entity have provided personal and individual guarantees of their obligations.

To carry out their obligations, the management company named, with the Pueblo's concurrence, an exclusive agent who has the authority to make decisions and bind the management company to those decisions.

The Owner-Monitor works with the agent to see that the obligations of the Agreement are carried out.

d. General Manager.

The Owner-Monitor's most frequent contact is with the General Manager who is the only management company employee on the premises. Communications concern the full spectrum of operations from long ranged planning to daily operations.

ATTACHMENT III

Control Chart and Notes

SANDIA INDIAN BINGO

CONTROL CHART

Decision or Action ■ Review and Inquiry ▨ Information ☐

Subject Matter	Management	Agent-SIMCO	Owner Monitor	Governor	Tribal Council
1. Bingo Ordinance Modifications	☐	☐	▨	■	■
2. Management Agreement Modifications	☐	■	▨	■	■
3. Bingo Ordinance Compliance	☐	▨	■	■	▨
4. Management Agreement Compliance	☐	■	■	▨	☐
5. Appointment of Owner Monitor	☐	☐	☐	■	■
6. Appointment of Agent (SIMCO)	☐	☐	■	▨	☐
7. Hiring/Firing General Manager	☐	■	■	▨	☐
8. Hiring/Firing Management Employees	■	■	■	☐	☐
9. Hiring/Firing Operations Employees	■	☐	☐	☐	☐
10. Other Personal Matters	■	☐	☐	☐	☐
11. Annual Budget	■	■	■	▨	▨
12. Disposition of "Net Operating Profits"	■	■	■	▨	☐
13. Operating Borrowing	■	■	■	▨	☐
14. Audits	☐	■	■	▨	▨
15. Operational Expenditures	■	■	■	▨	☐
16. Books of Accounts	☐	▨	▨	☐	☐
17. Monthly Financial Statements	▨	▨	▨	▨	▨
18. Monthly Statistical Reports	▨	▨	▨	☐	☐
19. Operational Planning and Development	■	■	■	▨	☐
20. Contracts, Leases, etc.	■	■	■	▨	☐
21. Daily Operational Reports	▨	▨	▨	☐	☐
22. Daily Operations	■	▨	▨	☐	☐
23. Major Decisions/Policy Determinations	■	■	■	▨	☐
24. Daily Operations vs. Major Decisions Classification	☐	☐	■	▨	☐

Control and Information Flow

Attached is a control chart developed to represent current operational conditions relative to decision making authority and information availability under normal operating conditions. As circumstances warrant, the Pueblo has substantive authority to involve itself in any matter concerning bingo activity on the Reservation.

Notes to Control Chart:

1. The bingo ordinance was approved by the Tribal Council on the 9th day of February 1983. It was amended to change the minimum age of a bingo player from 21 to 18 years of age.

5. The Pueblo's Business Development Technician has been appointed Owner-Monitor. In October 1984 a personnel transition in the position occurred. The transition occurred without disruption of operations or communication flow which can be attributed to the strength of the organizational structure and support systems.

6. The provision to have an agent on the premises was very important in the initial development stages of the enterprise. We have found that as the start-up provisions were executed and as management systems were developed and improved, the agent's presence became less of a necessity to the Pueblo. We are considering modifying our Management Agreement to reduce the agent's required time on the premises.

7. The General Manager of the enterprise is the key employee in the operation and has developed a good working relationship with the Owner-Monitor and Pueblo. On occasion, the General Manager reports on operations directly to the Tribal Council.

   With regard to Items 9., 10., and 22., the General Manager has complete authority and anyone over the General Manager will become involved only in unusual circumstances or at the request of the General Manager.

12. At the begining of each month and after financials have been prepared, a determination of cash flow needs of the operation is the factor used to determine the timing of the distribution of net operating profits from the preceding month.

13. The need to borrow from a financial institution for operations has not occurred.

14. The annual audit for 1984 received an unqualified opinion. It includes a review of internal accounting controls.

17. Monthly financial statements and reports are available to the Governor and Tribal Council at the Governor's office.

18. Monthly financial statements and reports are available to the Governor and Tribal Council at the Governor's office.

24. One of the reasons the enterprise is successful is due to management's responsibility to manage the day-to-day affairs of the business without tribal politics becoming a factor. However, when a dispute arises regarding the classification of day-to-day management decisions on one hand and major decisions for policy determinations on the other, the Pueblo shall make that determination under the provisions of the management agreement.

ATTACHMENT IV

Background and Methodology of Negotiating Management Agreement

1. Decision of Tribal Council.

Tribal Council considered at length as to undertaking a bingo operation and decided in the affirmative in May 1982.

2. Negotiating Team.

The Tribal Council charged certain persons with the responsibility of negotiating the terms of the bingo management agreement. The negotiating team consisted primarily of the Business Development Officer employed by the Pueblo, the current Governor, and the tribal attorney. They were instructed to work with the local agency of the Bureau of Indian Affairs (BIA). No authority was granted for final approval of any proposed management agreement to this team.

3. Assessment of Bargaining Position.

Sandia's strengths were its location, i.e., being adjacent to the major metropolitan area of Albuquerque and nearby communities; that Sandia owned a warehouse-type building in excess of 30,000 square feet, then unoccupied. The building was on a 12-acre parcel of land, fenced, with some paved parking area, and the availability of basic utilities. Ready access was available to a nearby thoroughfare.

Sandia was willing to offer the above items to the endeavor but was reluctant to contribute the cash needed to renovate the building and to otherwise capitalize the initial expenses of the operation.

4. Evaluating Existing Proposals.

The negotiating team desired to weed out the proposers who were not serious or patently unsuitable. The criteria which was used in deciding who were a serious prospect and who were not were: good reputation, the wherewithal to finance the venture, and bingo management expertise.

Applying these standards, the number of proposers reduced themselves to three and these three were the ones with which serious negotiations thereinafter transpired.

5. Sandia's Form of Contract.

Each proposer had his own form of a proposed management agreement; although each was different from the other, they did possess common similarities. The similarities were: a term of years considered overly long by the Pueblo, i.e., ten years or more, a 51-49% split of the net profits, and provision that the capital outlay of the investors be repaid prior to any distribution of profits. Utilizing these proposed forms of agreement, together with other samples, and utilizing its own ideas with respect to these three points, Sandia developed its own form of a management agreement, and this essential form was presented to each of the proposers and formed the the basis for negotiations. This occurred in December 1982.

All of the proposers were aware, by design, that there were competing proposals and each proposer was told that the Pueblo intended to sign with the proposer who presented the "fustest with the mostest."

In May 1983, the Pueblo submitted the form of the Management Agreement, unexecuted, to the BIA and to the Office of the Solicitor and asked for comments or recommendations. The question was posed as to whether the Management Agreement required BIA approval inasmuch as it was a management agreement as opposed to a lease of land. Parenthetically, the Pueblo desired that the agreement be approved to demonstrate federal involvement thence enhancing the preemption argument if the bingo operation were to be challenged.

All three proposers met at length with the negotiating team and two of the proposers were presented to the Tribal Council during the negotiating period.

6. Key Issues in Management Contract.

The Pueblo regarded as key issues in the Management Contract certain items:

a. That the Tribe have the right to approve architectural plans prior to the commencement of the renovation.

b. That a budget be prepared and presented to the Pueblo showing the costs of the renovation and the acquisition of equipment. Moreover, the Manager was required to show financial capability of meeting those financial requirements established by that budget.

c. In addition to other budget matters, the Pueblo insisted that a special account be established to make sure that sufficient monies existed to pay prizes to bingo game players at the outset of the operation, guarding against the possibility that at the beginning of the games there would otherwise not be sufficient cash on hand to pay prizes. This was a potential embarrassment which the Pueblo was intent on avoiding.

d. The Manager was obligated to pay for most of the "start-up" expenses which were not to be paid out of the bingo operation. They were to be the exclusive expenses of the Manager. Other type of expenses such as consumables and salaries were to be considered a business expense.

e. The Pueblo should receive a substantially greater share of the net profits than the 51-49% division generally proposed.

f. The agreement would be for a relatively short term and that there be a "buy-out" provision at the end of five years.

g. Sandia members were given absolute perference in hirings.

h. The Pueblo would have a owner-monitor on the premises at all times with complete access to all of the books and records and control of paying all expenses.

7. Execution.

The Management Agreement was ultimately signed by both parties on October 12, 1983.

ATTACHMENT V

Steps Taken to Clear Investors and Managers

1. With respect to key management persons and investors, Sandia required the following information: name, current address, previous resident address, business, Social Security number, date of birth, and place of birth. A resume and personal financial statements were requested.

2. Going through the local Bureau of Indian Affairs (BIA) agency, these individuals were checked with respect to any criminal activity or association with criminal activities through the: National Criminal Information Center located at the headquarters of the Federal Bureau of Investigation, the records at the State level for the State in which the investors were located, for example the Florida Department of Law Enforcement or the Texas Department of Public Safety in Austin. Checks were made through the police departments of the locality wherein the individual resided. All names were also submitted to the New Mexico Governor's Organized Crime Commission. Credit checks through recognized credit bureaus were requested. Generally, the individuals had some previous contact with Indian bingo. If so, contract was made with that Indian bingo operation and inquiries made as to the individuals reputation and performance. Contact in the same regard was made with the local BIA agency within which jurisdiction the particularly Indian bingo operation existed.

3. At least in one instance the information developed was such that it required an explanation together with documentation by one of the individuals. This required more vertification, and ultimately the Tribal officials were satisfied as to this particular individual.

4. Having established the good record and repute of these individuals the Pueblo needed to be assured that there would not be subsequent investors not cleared by the Pueblo. Accordingly, the Pueblo asked for and received a letter from the attorney representing the investment group, a corporation, the letter stating that no stock would be issued to any person in the corporation other than persons shown on an attached list, and those persons listed were the individuals cleared. An office of that cooperation certified to this assertion as well.

Mr. TAYLOR. Mr. Walker.

STATEMENT OF DONALD WALKER, REPRESENTING SIMCO, INC., MacDONALD-WALKER GROUP, INC., CLEARWATER, FL

Mr. WALKER. My name is Donald Walker. I am president of SIMCO, a New Mexico corporation. We operate the bingo hall along with the Sandia Pueblo. I want to speak on behalf of the much maligned outside operators at this time.

Our function in this joint venture to date has been, No. 1, the financing. We financed the renovations and the installation of all the bingo equipment. If you are an outside person operating on Indian land, there is no bank financing for this. I understand some tribes have some financing routes to take and they can do that on their own, but we did not have that option. It was hard money to come by.

Our second job was to set up the procedures both for the operations and the accountability. We ended up doing that, setting up the basic outline and then going to an outside accounting firm, Touche-Ross. We both got a system that we both agreed on.

An analogy that I used to like to use is to try to set this thing up like a glass clockwork so everybody could see what was going on at any given time.

We also bore the risk of the training and initial financing of the first couple of weeks of prizes, which is kind of scary when you are opening up a new game in a new market.

From our 2 years' experience of operating the bingo hall with Sandia, the key ingredient really is that both sides treat the bingo hall as a professional operation. Frank noted that tribal politics was kept out of the operation. It really has been. The Sandias' behavior has been truly professional, and I hope ours has, too. The way to do that is by a good contract that well defines all the responsibilities.

In reference to the bills, what we would like to see in the bills is the pr~~otection, thr~~ough very thorough screening procedures, from crime, organized or disorganized. We don't want anybody in there that has an unfair advantage.

Basically, I think they would like to see some Federal guidelines on the contracts themselves—what is an acceptable contract. Then when you get on down to the third point, this commission or commissioner, we would hope that the guidelines would be detailed enough so that the Commissioner or the Secretary, whoever approves us, would merely see that the contracts and the agreements fit within something that was hammered out ahead of time rather than having something that shifts with political whims and/or a new person that gets into the office.

That's basically all I would like to say.

Mr. TAYLOR. I read your prepared testimony last night. Your statement will be made a part of the record.

If there are no further comments, sir, would you like to make a statement?

Mr. ESQUIPULA CHAVES. Mr. Chairman, we want to thank you for the time given us here to present our testimony. We appreciate this.

Mr. TAYLOR. Perhaps you had better identify yourself for the record.

Mr. FRANK CHAVES. This is Governor Esquipula Chaves.

Mr. TAYLOR. Oh, I'm sorry. I had you mixed up. Thank you very much, sir.

[The prepared statement follows:]

STATEMENT OF DONALD L. WALKER PRESIDENT, SANDIA INDIAN MANAGEMENT COMPANY [SIMCO]

Mr. Chairman, I appreciate the opportunity to be here today along with Sandia Pueblo. My name is Donald Walker; I am President of Sandia Indian Management Company (SIMCO), a New Mexico corporation formed specifically to renovate an existing Pueblo-owned building; purchase and install bingo equipment; and operate the bingo hall on the Sandia Reservation. SIMCO was formed from the McDonald-Walker Group, Inc. (see Attachment I), a Florida Sub-S Corporation, who, prior to the investment at Sandia, considered investing in the Seminole Indian-Tampa Bingo Hall. We declined that investment but saw opportunity in the Indian bingo business.

We were introduced to the Sandia Pueblo in August 1983. Sandia Pueblo had a suitable facility and presented a workable contract for our consideration. The contract between Sandia Pueblo and SIMCO was signed as presented by the Pueblo, with no modifications. The contract included the following provisions: 1) The contractor-manager (SIMCO) would renovate the Pueblo's existing industrial building at SIMCO's expense; 2) SIMCO would supply the bingo equipment and television monitors; and 3) SIMCO would set up personnel and operations policies, providing training, and supply the first $20,000 of start-up expenses.

Our experience of nearly two years with Indian bingo tells us that tribal politics can spell failure for this type of joint venture. The professional manner of Sandia Pueblo has been a major factor in our shared success. By contrast, McDonald-Walker is presenty dissolving a bingo operation in Oklahoma where tribal politics forced management to conclude that chances for financial success were limited.

A concern that Sandia Indian Management Company (SIMCO) generally has with Indian gaming is that of security clearance for potential investors and management firms. Lacking experience with Indian gaming, we viewed the security check as a mere formality. When contract closing was delayed three weeks, we realized that clearance was a thorough process. Sandia's investors were pleased with this thoroughness, particularly since the possibility of criminal intrusion in Indian gaming operations is a threat and a legitimate concern for all those involved.

SIMCO's position is that the intent of HR1920 is reasonable. We feel that federal standards should be applied not only to protect the tribes from intrusion by organized crime, but also to assure honest business people who invest and work with the tribes that the risk of such intrusion is minimal.

We support reaffirmation in the legislation that tribal entities may retain their right to ventures not prohibited by law. Likewise, we are very doubtful that additional governmental bureaucracy is the answer to the question of how best to administer the necessary federal standards. I cannot overstate to the committee, and the administration, the importance of not impeding tribal ventures into the business world. Our evaluation of Indian bingo from a business perspective forecasts risk of a consequential nature. For example: 1) We would be dealing with a sovereign nation who could not be taken to court easily as a way of resolving differences. 2) The Albuquerque bingo market was an unknown with regard to high stakes bingo. 3) Since building improvement was on tribal trust land, bank financing was unavailable. The renovation was estimated at $450,000. So, needed capital improvements were financed by SIMCO in full cognizance that we would give up title as soon as the money was spent. Actual construction costs were almost double the original architectural estimate.

Generally, investors in Indian bingo assume these greater risks because the prospect for return is good. Therefore, within an upper limit of return, investors and tribes should have flexibility to negotiate to mutual benefit. Otherwise, tribes seeking investors may lose this source of capital which neither the commercial banking system nor federal government appear ready to provide to any sizeable degree.

As stated, SIMCO's investment risks at Sandia were considerable. For example, the need to guarantee prizes was immediate and large—the first night's prize liability was $35–50,000 and we were operating four nights a week. Based both upon successful and unsuccessful ventures, we recommend that section 7 of HR1920 concerning "contracts for the management and operation of a tribal gaming enterprise" be modified by adding the following six provisions.

1. The term of the contract must be a minimum of five years.
2. A 60/40 split in favor of the tribe should be a minimum requirement.
3. The contract should be specific in reference to areas of responsibility for both operation and expenses.
4. An arbitration procedure should be included to cover disputed matters.
5. An approved system of accounting should be established for cash as well as paper, and should be a part of the contractual agreement.
6. The tribe should be represented at the facility by an Indian monitor who is specifically charged with this responsibilty.

This proposed addition to the bill would be a desirable replacement for section 7.

The important issue of security clearance for investors and management groups as well as the necessity of having mutual responsibilities can ensure success of the enterprise. These two issues should be explicitly detailed in the enacted legislation rather than leaving decisions on these issues to administrative discretion by either the Interior Secretary or a gaming commission. To accomplish this purpose, we recommend section 7 be further modified by substituting a new section 7 (e), as follows: "To qualify for a contract to engage in the Indian gaming business, the reservation must be located in a state where that form of gaming is legal under federal law and not prohibited by state criminal law. The tribe and its investors and management firm must meet the following minimum criteria." The law would then detail necessary features of the contract, the steps taken to ascertain the character, integrity, and background of the investors and managers, and methods of tribal control. For such delineation, we recommend that the committee consider the steps, procedures and control process used by the Sandia Pueblo bingo enterprise. The successfully proven mechanisms are contained as attachments to the Sandia Pueblo testimony.

This concludes my testimony and my prepared statement. I would be pleased to respond to any questions the committee might have at this time.

ATTACHMENT I

MCDONALD-WALKER GROUP, SANDIA INDIAN MANAGEMENT COMPANY (SIMCO)

Harry Clayton McDonald, 1400C 15th Street North, Immokalee, Florida 33934. Citrus grower; President, Frutas y Sabores, San Jose, Costa Rica.

Royce D. McDonald, 156 Shadow Lane, Lakeland, Florida 33803. Citrus grower; Magna Cable Vision, Orlando, Florida.

Charles S. Walker, 2140 Belleair Road, Clearwater, Florida 33516. President, Gulf Machinery Company, Safety Harbor, Florida.

David Lee Walker, 3007 South Indian River Drive, Ft. Pierce, Florida, 33540. Owner, Walker Citrus; H & S Packers.

David Ray Walker, 2114 Meadow Brook Drive, Clearwater, Florida 33519. Vice President, Gulf Machinery Company, Safety Harbor, Florida.

Donald L. Walker, 415 Magnolia Drive, Clearwater, Florida 33516. Vice President, Gulf Machinery Company, Safety Harbor, Florida.

Sam E. Heath, Immokalee, Florida 33934. Retired.

Major Jackson Whisnant, 395 North 15th Street, Immokalee, Florida 33934. Farm Bureau Insurance.

Eugene Turner, 105 South Brevard Avenue, Arcadia, Florida 33821. Turner Real Estate; Farming.

Richard Donald Whidden Welles, Post Office Box 110, Arcaida, Florida 33821. Rancher; Grower.

These are the officers of SIMCO: Donald L Walker—President Richard D. W. Welles—Vice President Major Jackson Whisnant—Secretary Charles S. Walker—Treasurer.

Mr. TAYLOR. We have one other person who is facing a deadline here, Norman Austin from Fort McDowell.

Let me call up also Myrtle Tolanen from the Keweenaw Bay Chippewa. She has an airplane also to catch.

Mr. Austin, would you proceed?

I would like to add that we probably are going to have to close this down by about 4 o'clock. Therefore, I will have to urge everyone to be brief.

STATEMENT OF NORMAN AUSTIN, PRESIDENT, FORT McDOWELL MOHAVE-APACHE INDIAN COMMUNITY

Mr. Austin. Thank you.

Mr. Chairman, my name is Norman Austin. I am president of the Fort McDowell Mohave-Apache Indian Community located along the Verde River, northeast of Phoenix, AZ.

As you know, Fort McDowell has a long history of fighting the hostile actions of the State and Federal Governments. The Yavapai people were forced on a long march to leave their homeland along the Verde River and forcibly relocated to the San Carlos Reservation. My people eventually returned to our homeland and were able to establish a reservation along the Verde River. Since the creation of our reservation, we have fought the efforts of the non-Indian community in Arizona to build the Orme Dam which would flood most of our precious land.

During the sixties and seventies, our small tribe was fully preoccupied with fighting the strong political forces who supported the construction of Orme Dam. The Federal Government would not allow us to use many of our available Federal programs at that time for construction on our land because of the proposed dam. We missed many opportunities to take advantage of generous Federal spending in those days because of our preoccupation with the Orme Dam battle.

In the late seventies and early eighties, we were told by the BIA that they would no longer fund our preschool. Our preschool is one of the highest tribal priorities. It is our way of giving our children a fair chance in school, letting the young ones spend time with older members of the community.

As you know, Mr. Chairman, that is how we got this bingo on our reservation, because of all of our Federal Government aid was cut in the early part of the eighties, the late part of the seventies. We couldn't ask for any of that because our reservation is small. The population is right around 400.

Again, I spent most of my time here back in the late seventies and early eighties because of the fight of the Orme Dam issue that came up on our reservation. We have, like I said, missed most of our chances by not getting any of those funds.

I am here still yet fighting to find some source or direction how to get monies for our people. As far as the bingo, on our reservation that is where most of our monies going to go, to continue with the preschool and other programs that we have on the reservation.

As for other issues that were brought up by the attorney general, I am sure that he was probably mentioning our Fort McDowell reservation. We have told him time and time again that if he could spend monies to go ahead and try to fund our programs, we are willing to do and go along with whatever he wants, but he keeps saying things about our preschool; he keeps saying things about the bingo on our reservation, saying that we have slot machines. It is not slot machines. We have told him time and time again to come out to our reservation to see.

The FBI and all other Federal authorities were out there to see these machines we have on our reservations, and they said there were no slot machines. But the thing about it is Corbin keeps saying all these other things. We also know that he cannot control prostitution or illegal things, and how can he control the Indian reservation; how can he control us?

Mr. TAYLOR. Mr. Austin, did the FBI characterize those machines as mechanical devices?

Mr. AUSTIN. Pardon me?

Mr. TAYLOR. Did they characterize those machines as mechanical devices?

Mr. AUSTIN. They said it was mechanical, yes, but not a "mechanical device."

Mr. TAYLOR. They are? That creates some problem for you under Federal statute.

Mr. AUSTIN. There is not a problem. They didn't say anything about a violation of Federal statute.

Mr. TAYLOR. Doesn't that create a problem for you under Federal——

Mr. AUSTIN. No. We went through all the legal procedures. It is not only our reservation, these video machines are used on Federal lands in California and in the State of Washington. That is how we got these machines on our reservations. We have had legal people go down there and play, and they said they didn't see any point in it. I mean, they didn't see nothing wrong with these machines.

Mr. TAYLOR. I appreciate that testimony. We are well aware of that preschool program you had. I am very glad to hear that you are able to continue operating that. It sounded very successful.

Mr. AUSTIN. Yes.

[Statement of Mr. Austin and a letter from Eric Dahlstrom, attorney for Four Rivers Indian Legal Services, stating the tribal portion on S. 902, follow:]

PREPARED STATEMENT OF NORMAN AUSTIN, PRESIDENT, FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY

My name is Norman Austin, I am President of the Fort McDowell Mohave-Apache Indian Community located along the Verde River, northeast of Phoenix, Arizona.

Fort McDowell has a long history of fighting the hostile actions of the state and federal governments. The Yavapai people were forced on a long march to leave their homeland along the Verde River and forcibly relocated to the San Carlos Reservation. My people eventually returned to our homeland and were able to re-establish a reservation along the Verde River. Since the creation of our reservation we have fought the efforts of the non-Indian community in Arizona to build the Orme Dam which would flood most of our precious land. During much of the sixties and the seventies, our small tribe was fully preoccupied with fighting the strong political forces who supported the construction of Orme Dam. The federal government would not allow us to use many of the available federal programs at that time for construction on our land because of the proposed Dam. We missed many opportunities to take advantage of generous federal spending in those days because of our preoccupation with the Orme Dam battle.

In the late seventies we were told by the BIA that they would no longer fund our preschool. Our preschool is the highest tribal priority. It is our way of giving our children a fair chance in school, letting the young ones spend time with older members of the Community, and preserving our tribal community. We fight every year for the continuation of the preschool, but we decided in 1983 that we needed an alternative source of funds to continue the school. That's when we began talking about bingo.

When our Community first discussed bingo, we were very cautious. We knew there were risks-possible political heat, chance of corruption and many of the bingo promoters around the country seemed to be out to make a fast buck. Who could we trust? Could we trust our own government to handle this kind of project? What if it failed? What if it was successful?

We knew we could not develop the bingo entirely with tribal funds and with our own management. To start a first class bingo would take alot of money plus capable management. We wanted the bingo to begin quickly so we could be first to establish the reputation of our facility in the Phoenix area. So, we made a deal with a firm for capital investment and management with tribal ownership and control, employment, and total and complete disclosure. Despite the fact of tribal ownership, we have adopted a very strict licensing ordinance which I have submitted for the record.

We are very happy with the bingo. We have begun to get a return on this project which should substantially increase over time. It would be a terrible thing if the bingo were now shut down.

We appreciate the concerns raised by the Arizona attorney general. However, I must say our feeling is that most of the non-Indian community supports the right of Indian tribes and Indian people to conduct bingo. We have not received any substantial negative reaction from the neighboring communities. In fact, the response has been quite the opposite—very positive.

This is not to say that there are not risks in any high stakes bingo game. The game involves a lot of cash and that always requires strict oversight. However, the solution is strict oversight and regulation, cooperation among governments, and specific solutions to problems. Not rhetoric from high government officials. It simply is not helpful for the attorney general of Arizona to suggest in the public media that if Indian tribes are allowed to continue with gaming the next step will be legalization of heroin sales and prostitution. A more helpful approach is the one taken by Senator DeConcini and Congressman Udall. That is to establish federal standards for gaming activity in Indian country. We would suggest that the state governments could assist by having their criminal investigation services cooperate with tribes on background checks and oversight. When we were seeking information on people we were considering doing business with concerning the bingo, we were told that the state government could not share criminal intelligence information directly with tribal governments. Federal legislation could assist in promoting cooperation among governments.

In general, the Fort McDowell tribe believes the basic federal policy on Indian gaming should be the same as that applied to state government. That is, whether or not to engage in gaming is a local government decision. Of course, in the case of tribes, the federal government has a special relationship. This relationship is best expressed in a requirement of strict regulation implemented through Secretarial approval of tribal gaming ordinances.

Fort McDowell is a small tribe. We have a very limited potential for economic development. Bingo will help us build a capital base from which we can move toward self-sufficiency. Fort McDowell recognizes the risks in Indian gaming and is willing and capable of dealing responsibly with those risks.

Let's face head on those concerns raised by state governments and others in the legislative process. All legitimate concerns can be resolved. The appropriate federal policy concerning Indian gaming should be hammered out in the legislative arena, rather than left to the expensive, piecemeal, and lengthy litigation process.

Finally, we appreciate the introduction of S.902 as a mechanism for focusing the national debate concerning Indian gaming in a responsible and productive direction. We stand ready to engage responsibly in that debate.

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June 21, 1985

The Honorable Dennis DeConcini
United States Senate
328 Hart Senate Building
Washington, D.C. 20510

Dear Sir:

The Fort McDowell Mohave-Apache Indian Community has been monitoring the progress of federal legislation regarding Indian bingo. As you know, the BA'JA Bingo Enterprise, an enterprise of the Fort McDowell Community, opened for business in the fall of 1984. As a result, Fort McDowell has a keen interest in any federal legislation affecting our operation.

I have been requested by the Tribal Council to give you their position on S.902.

The Tribal Council of the Fort McDowell Community strongly supports the enactment of federal legislation establishing federal standards for the conduct of gaming activities within Indian Country. We have reviewed S.902 and support the underlying purpose of the bill and believe, that even in its present form, it is better than no legislation at all. However, we believe S.902 could be greatly improved with some clarification and additions.

In the spirit of cooperation, we offer the following for your consideration:

1. The major benefit of federal legislation for tribes is clarification of the legal status of certain gaming activity. This result will be more likely with language which makes clear the legality of gaming activity conducted pursuant to a tribal ordinance which received approval from the Secretary of Interior. The suggested changes in Sec. 5 and Sec. 6(a) would help to prevent a whole new wave of litigation over the scope of permissible gaming activity. Section 5 of the proposed amendment, attached, clarifies the legality of gaming activity conducted pursuant to an approved tribal ordinance. Section 6(a) makes the determination of whether or not particular gaming activity is prohibited by state criminal law a question for the Secretary of Interior in approving or not approving a tribal ordinance. These changes will help the tribes achieve freedom from litigation, the major benefit of the legislation.

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2. The bill requires the tribe to have the sole proprietary interest in any gaming activity. This is the model typically used in state operated lotteries. Unfortunately, no Indian tribe has a sufficient population base to conduct a lottery modeled after a state. Even under the lottery model, states contract with individual retail outlets for the sale of lottery tickets. This requires a contractual relationship between the government and a private business. In all other gaming activity, whether for profit or non-profit, the private sector is involved to a greater or lesser degree in gaming. The private involvement can include lenders, licensees, managers, partners, vendors, or sole owner. The approach a particular tribe chooses to implement appropriate gaming activity within their reservation boundaries should be dictated by local needs, resources, and financial capability. Honest and profitable gaming activity can be conducted under many different financial, management, and regulatory schemes. No one particular scheme should be mandated on all tribes at the federal level. In fact, the sole tribal proprietorship model would penalize the poorest tribes. Many sources of capital, private and public, typically now require an equity position in any venture. The sole proprietor requirement might well preclude bank financing of a new bingo facility. There is no question that appropriate and strict standards are useful at the federal and absolutely essential at the tribal level. However, those standards are necessary whether or not the tribe maintains a sole proprietary interest.

3. The law enforcement and regulatory concerns would be greatly relieved by requiring states to give full faith and credit to approved tribal gaming ordinances and by making violations of tribal ordinances violations of federal law. Full faith and credit would allow better coordination between tribal and state criminal investigatory services which currently are only required to communicate and share information concerning licensing and possible criminal activity with agencies of state governments. Federal law enforcement agencies need both civil and criminal remedies for violations of tribal gaming ordinances against Indians and non-Indians both on and off-reservation. A possible approach would be to amend the RICO statute to incorporate tribal gaming laws into the federal enforcement scheme. Proposed language for a Section 12 of S.902 is attached.

Fort McDowell has recently enacted a comprehensive licensing scheme which fully empowers the tribe to handle the regulatory and law enforcement concerns of the BA'JA Bingo Enterprise as well as any other approved gaming activity. It would surely pass muster under any federal standards adopted. Fort McDowell, therefore, strongly endorse the adoption of specific regulatory standards which would be applied by the Secretary in the process of reviewing tribal ordinances. Some may suggest that a tribal ordinance should not be subjected to Secretarial approval, Fort McDowell is willing to concede to the approval process if, in return, the legislation heads off unnecessary and expensive litigation over the permissible scope of gaming activity.

Fort McDowell appreciates your commitment to the growth of Indian tribal government. Indian gaming is in fact now playing a large role in the financing of this growth. Your continued support is appreciated.

Very truly yours,

FOUR RIVERS INDIAN LEGAL SERVICES

Eric Dahlstrom
Attorney at Law

AMENDMENTS TO S.902 AND H.R. 1920

SEC. 5 is amended to read as follows:

SEC. 5. Gaming within Indian county shall be legal if conducted pursuant to a tribal ordinance or resolution adopted by an Indian tribal government and approved by the Secretary of the Interior (or Commission) as provided in this Act. Any violation of tribal gaming laws or regulations shall be subject to .....

SEC. 6 is amended to read as follows:

SEC. 6. Delete current (a) and add the following to (b) which would become the new (a).

(a) The Secretary or Commission shall approve any tribal ordinance or resolution concerning the conduct, licensing, or regulation of gaming activity within the tribe's jurisdiction if it provides, at a minimum, that:

> (1) The type of authorized gaming activity is itself not specifically prohibited within Indian country by federal law or within the State where the Indian country is located by State public policy, as a manner of criminal law.

Add a new SEC. 13 as follows:

18 U.S.C. § 1961 is amended by adding a new (1)(E) as follows:

> ".... (1)(E) Any act or threat involving a gaming offense as defined by an approved tribal gaming ordinance which, if committed by a person subject to the tribe's criminal jurisdiction, would be punishable under tribal law to imprisonment for at least six months."

Mr. TAYLOR. Ms. Tolonen?

STATEMENT OF MYRTLE TOLONEN, TRIBAL CHAIRPERSON, KEWEENAW BAY INDIAN COMMUNITY, L'ANSE RESERVATION, MI

Ms. TOLONEN. Thank you.

Mr. Taylor, distinguished members of the committee, permit me to introduce myself and to reacquaint you with the L'Anse Federal Indian Reservation before I comment upon pending legislation which would affect gaming activities on Federal Indian reservations.

I realize that you have heard much testimony on that legislation and that you will likely hear much more, buy my testimony may be more meaningful if you are familiar with the position from which I speak.

My name is Myrtle Tolonen. I am chairwoman of the Keweenaw Bay Indian Community which is located in the northernmost part of Michigan's Upper Peninsula, a remote area where unemployment and underemployment are rampant. Even the once bustling iron ore and copper mines which lie within 75 miles of the reservation which were popular at one time—have only sparse skeleton crews operating these mines now.

In President Reagan's Indian policy statement of January 23, 1983, we, being Federal reservation Indians in the United States, were urged to move forward with creative and innovative methods of economic development, and Federal policy was specifically expressed as being supportive of such efforts.

The President told us, just like other races of this country, we would be required to share the burden of decreased Federal spending, but the President pledged that if our government developed new and creative economic endeavors to help support our governmental activities that they would stand behind us. As we have so many times in our Nation's history, Indian people took the Government for its word.

I cannot speak for all reservations and for all States, but it has been readily apparent to our tribal government for many years that the State of Michigan has allowed, and in fact actively encouraged, participation in various forms of gaming by citizens of both Michigan and other States. For years parimutuel horse wagering has been a profitable activity for State government and private businessmen. More recently, a State advisory vote supporting State involvement in gaming by a considerable margin has formed the foundation for a massive State lottery program and literally thousands of local, licensed bingo operations, Las Vegas nights, and millionaire party operations where blackjack, roulette, and other casino-type games are played.

It has not escaped our reservation's tribal council that massive profits, both for the State government and private businessmen, have flowed from such operations. However, when the tribe decided to regulate casino gambling on the reservation, the bottom line of the whole critical issue was, when the Indians do it, it is bad business, but the non-Indians do it, it is good business.

During 1981, and with the perspective which I have described, our tribal council authorized a tribally-operated bingo game which is identical to games being played by the States. I am sure that there are none among you who would suggest that if it is morally and legally proper to wager $5 with the potential of winning $50 that it would be morally and legally wrong for one to be able to wager $10 with the potential of winning $100, yet that is the argument which some would make concerning our tribal bingo operation.

Since the institution of our tribal bingo operation, it has been firmly and fairly regulated and administered, and not a single allegation or suggestion of impropriety has come to our government's attention. In fact, many say that ours is the best administered bingo program in which they have ever been involved.

Our games provide hours of pleasure for people from many parts of the Upper Peninsula who choose to participate voluntarily but at the same time it provides our tribal government with a desperately needed source of revenue to fund tribal governmental programs that have been cut over the years.

During the past few years the government of the Keweenaw Bay Indian Community has expanded the gaming activities on our reservation through the authorization of various gaming licenses which include blackjack, roulette, and whatever Las Vegas has except for mechanical devices. We are not presently in Federal court. Our tribe's licensing concept is embodied in the tribal code of the reservation and has been appproved by the U.S. Department of the Interior.

In 1981 our tribal council passed a gambling ordinance which was also approved by the Department of the Interior, and that is where we have the authority to issue license for casino gaming activities.

In summary, I do not appear before you today in support of or in opposition to any particular bill pending before Congress, but rather offer, first, a general question and, second, a general comment.

Constitutionally, the 50 States of this Nation are sovereign, which may act to regulate conduct within their boundaries independently and subject only to the constraints imposed by the Federal Government in those areas where the Federal Government is supreme. The Federal Government has not declared gaming to be illegal, a violation of any public policy. Constitutionally, Federal Indian reservations' governments are sovereign and may act independently to regulate the conduct of their members upon their reservation subject to only those areas which the Federal Government has authority.

The Federal Government, through various bills, is giving consideration to regulating gaming activities on Federal Indian reservations in such a way in some cases that State regulations and law would, in effect, govern what occurs within the boundaries of the sovereign reservations.

In the event that Congress feels that legislative activity in this area is required, may I respectfully suggest that it be legislation which confirms that sovereignty of reservation governments and their right to regulate on-reservation activity affecting their members.

I thank you, Mr. Chairman, for this opportunity to appear before you today, and I have also submitted written testimony for the record.

[The prepared statement follows:]

PREPARED STATEMENT OF MYRTLE TOLONEN, TRIBAL CHAIRPERSON, KEWEENAW BAY INDIAN COMMUNITY, L'ANSE RESERVATION, MICHIGAN

Permit me to introduce myself and to briefly acquaint you with the L'Anse Federal Indian Reservation before I comment upon pending legislation which would affect gaming activities on Federal Indian Reservations. I realize that you have heard much testimony on that legislation, and that you will likely hear much more, but my testimony may be more meaningful if you are familiar with the prospective from which I speak.

The L'Anse Reservation is located in the Northern most part of Michigan's Upper Peninsula, a remote area where unemployment and under-employment are rampant. Although a few of this nation's federal Indian reservations possess vast mineral or petroleum wealth, my reservation does not. Even the once bustling iron ore and copper mines which lie within seventy-five miles of my reservation, and which at one time very positively affected the local economy, have either closed entirely or are operating with skeleton crews. The phrase "depressed area" is perhaps overworked but it indeed applies to our area.

In President Reagan's Indian Policy Statement of January 23, 1983, we, being federal reservation Indians in the United States, were urged to move forward with creative and innovative methods of economic development and federal policy was specifically expressed as being supportive of such efforts. The President told us that reservation Indians, just as other segments of our country's population, would be required to share the burden of decreased federal spending but the President *pledged* that if our people developed new and creative economic endeavors to help support our governmental activities the United States government, as a mattter of federal policy, would act to help rather than hinder us; would work toward deregulation rather than regulation; and would eliminate bureacratic roadblocks rather than erect them. As we have so many times during our nation's history, Indian people took their government at it's word.

I cannot speak for all reservations and all states but it has been readily apparent to our Tribal Government for many years that the State of Michigan has allowed, and in fact actively encouraged, participation in various forms of gaming by citizens of both Michigan and other states. For years, para-mutual horse wagering has been a profitable activity for both the State government and private entrepreneurs. More recently, a State advisory vote supporting State involvement in gaming by a considerable margin has formed the foundation for a massive State lottery program and literally thousands of local, licensed bingo operations and millionaire party operations were blackjack, roulette, and other casino type games are played. It has not escaped our Reservations Tribal Council that massive profits, both for the State government and private entrepreneurs have flowed from such operations nor has it escaped our Council that the most basic principles of Tribal sovereignty and independence would dictate that if the State of Michigan does not find gambling activities to be against public policy, and if the State of Michigan may regulate such activities, so to, may we.

During 1981, and with the prospective which I have described, our Tribal Council authorized a tribally operated bingo game which is identical to games being played with state approval in every other part of the State except insofar as the amount wagered, and the amount which one might potentially win. I am sure that there are none among you who would suggest that if it is morally and legally proper to wager five dollars with the potential of winning fifty dollars that it would be morally and legally wrong for one to be able to wager ten dollars with the potential of winning one hundred dollars yet that is the argument which some would make concerning our Tribal bingo operation. Furthermore, I would doubt that any of you would suggest that the State of Michigan could not at any time change it's bingo regulations to allow larger wagers and larger prizes. Yet there are those who say that reservation gaming activities must have precisely the same rules and limitations as those operated by states. In other words, it is suggested in some pending legislation that if a state limits a wager to five dollars a reservation government within that state which is otherwise totally independent and sovereign must abide by the same five dollar limitation until and unless the state chooses to raise the maximum wager to ten dollars, at which time a reservation government presumably be allowed to follow suit. Why and by what rationale? Such legislation would not only fly in the face of the President's pledge but would also attack the basic underpinnings of federal reservation status not to mention the United States Constitutional recognition of the sovereign nature of reservation governments.

Since the institution of the Tribal bingo operation it has been firmly and fairly regulated and administered and not a single allegation or suggestion of impropriety has come to our government's attention. In fact, many say that ours is the best administered bingo program in which they have ever been involved. Our games provide hours of pleasure for people from many parts of the Upper Peninsula who choose to participate voluntarily but at the same time it provides our Tribal government with a desperately needed source of revenue to fund Tribal governmental programs in the same fashion as state regulated gaming in Michigan provides such revenue for State programs. Would the Congress attempt to impose limitations upon the types of gambling activities which a State might choose to regulate and allow? Would anyone in Congress suggest that State regulations pertaining to the licensing and operation of gaming activities must be the same as the regulations in effect upon reservations lying within the State? Surely not, and by what rationale should the reverse be even considered.

During the past few years the government of the Keweenaw Bay Indian Community has expanded the gaming activities on our reservation through the authorization of various types of gaming licenses which are available to Tribal Members and Tribal organizations only provided that applicants meet rigid qualifications. Our Tribe's licensing concept is embodied in the Tribal Code of the Reservation and has been approved by the United States Department of the Interior. After much study comprehensive regulations have been enacted by the Council which licensees must adhere to. The gaming activities authorized by such licenses are no different in any significant way than those of the State of Michigan except in terms of the amount which a participant may win, and further the games offered are in no way violative of federal law. We have taken the initiative to find innovative and new methods to finance our Tribal Government's much needed programs as President Reagan urged, and our government, with the express approval of our People, has developed a fair but firm regulatory scheme which I have yet to hear challenged by anyone as being insufficient to meet the existing need. I have heard no one clamoring for federal legislation designed to regulate or approve the concept of State licensed and regulated gaming activities; why are the same type of activities which have been approved by my government the subject of so much furor.

In summary, I do not appear before you today in support or in opposition to any particular Bill pending before Congress but I would rather offer firstly a general question and secondly a general comment.

Constitutionally, the fifty states of this nation are sovereigns which may act to regulate conduct within their boundaries independently and subject only to the constraints imposed by the federal government in those areas where the federal government is supreme. The federal government has not declared gaming to be illegal or violative of any public policy. Constitutionally federal Indian reservation governments are sovereign and may act independently to regulate the conduct of their members upon their reservations subject only to those areas which by the Constitution are within the Federal Government's authority. The Federal government, through various bills, is giving consideration to regulating gaming activities on Federal Indian Reservations in such a way, in some cases, that State regulations and laws would in effect govern what occurs within the boundaries of the sovereign reservations. Why is such federal legislation even being considered in the first place as to reservation governments when it is not being considered as state governments.

In the event that Congress feels that legislative activity in this area is required may I respectfully suggest that it be legislation which confirms the sovereignty of reservation governments and their right to regulate on-reservations activity affecting their members. Thank you.

Mr. TAYLOR. Thank you, Ms. Tolonen. Thank you very much.

Is Mr. Rolapp of the American Horse Council present?

Mr. Rolapp, I would give you the same urging I have given other witnesses. Any prepared testimony will be made a part of the record and it can be supplemented later, if you feel it needs to be.

STATEMENT OF R. RICHARDS ROLAPP, PRESIDENT, AMERICAN HORSE COUNCIL, WASHINGTON, DC, ACCOMPANIED BY THOMAS ARONSON, EXECUTIVE SECRETARY, ADVISORY COMMITTEE ON RACING

Mr. ROLAPP. Thank you very much.

My name is Rich Rolapp, and I am president of the American Horse Council, which is a Washington, DC-based association representing all kinds of horse activities and the horse industry in general.

I have with me on my left Tom Aronson, who is executive secretary of our Advisory Committee on Racing.

We have been asked to appear here today on behalf of the various groups involved in thoroughbred, harness and quarterhorse racing as well as breeders and owners of race horses, horsemen's organizations, and the National Association of the State Racing Commissioners.

You have our statement which sets forth our position, which is essentially ~~that we believe~~ that gaming and gambling activities on Indian reservations should be subject to State regulation and supervision. In support of our position, I would like to refer the committee to the report of the Commission on the Review of the National Policy Toward Gambling, a Presidential and congressional commission which issued its report in 1976. Unfortunately, the report has gathered dust ever since, but I would like you to study it carefully, particularly that section having to do with gaming on Indian reservations.

Mr. TAYLOR. Is this the same report that was referred to by Mr. Guccione on the greyhound——

Mr. ROLAPP. Yes, sir.

I would like to quote from the conclusion of the report just briefly where "the commission would place all gambling activities under the control of applicable State law;" that is, gambling activities on Indian lands should be "subject to the same licensing and regulatory requirements whether conducted on or off a reservation." We subscribe to that conclusion.

We also would like the committee to take into consideration the fact that bingo operations are far different from parimutuel horse racing. There has been evidence submitted that some of the tribes have done a good job regulating bingo operations and others have had some problems, but the more sophisticated the gambling operation becomes—for instance, if an Indian tribe were to become involved in a horse racing operation—we doubt that the tribe would have the expertise or the resources to adequately regulate and control that kind of gambling. Because we are concerned about the public's interest here and because we are concerned about the image of our sport and business, and because so much is expended nationally both by our industry and by State governments to regulate it, we are concerned that if horse racing operations did develop on Indian lands that there may not be the capacity to adequately regulate it. Therefore, we think that the States should be given that authority.

One other point: when it comes to regulation, I think that with the tribal governments being directly involved and also having a financial interest in the operation, there could be some questions that are raised as to whether or not they can adequately regulate the operation, because they are interested in its financial success.

I am not saying that this would happen, but there might be the appearance that the tribe would turn the other way if there were some improper activities going on. At least the public might perceive it as such.

If you have any questions, we would be happy to try to answer them.

Mr. TAYLOR. I don't have any questions. I might just observe that I think the fact that a tribe might have an interest, a proprietary interest, in the racing might also give them a special incentive to keep the game extremely honest, because if the thing goes sour on them, they are going to lose literally the only source of revenue that they would have.

Mr. ROLAPP. Well, you would hope that it would work that way, but sometimes with a major scandal at a gaming operation, the temptation is to cover it up rather than to let the public know about it, because it might hurt business if they think something illegal is going on.

Mr. TAYLOR. Thank you very much.

Mr. ROLAPP. You're welcome. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF R. RICHARDS ROLAPP, PRESIDENT, AMERICAN HORSE COUNCIL

INTRODUCTION

The American Horse Council (AHC) is a Washington, D.C.-based association of organizations and individuals involved in the horse business.

The memberships of the 142 organizations represented by the Horse Council encompass the vast number of owners, breeders, riders, trainers and other professionals whose business livelihoods depend on the horse, as well as a significant segment of non-professional participants in horse-related recreational activities around the country. In total, we estimate at more than 2,000,000 the size of this professional and non-professional population of horse industry participants represented by the American Horse Council through its member groups.

Included among the organizations represented by AHC are the major trade associations of thoroughbred, standardbred and quarter horse race tracks, breeder groups, horsemen's organizations and state regulatory authorities which collectively comprise the pari-mutuel horse racing industry. It is on behalf of this pari-mutuel business, a major segment of the American horse community, that we have asked to be able to present our views on the matter of gambling on Indian lands.

Wagering, including that which is legally conducted on horse races around the country, has traditionally been an issue of concern to Congress and state governments. We therefore feel it entirely appropriate, and important, that this committee consider the reasons for the historically strong government oversight of gambling matters and their pertinence to the issue at hand.

It is our position that the traditional and purposeful policies of the federal government and the states to regulate gambling matters should be extended to gambling on Indian lands. This position is not lightly taken, nor is it by any standard an effort to prevent the entry of Native American groups into the area of horse racing and the horse racing business. It is, rather, consistent with the dual goals of fair enterprise and gambling regulation which have characterized our laws to date.

In presenting this position we would like to define for you the existing pari-mutuel horse racing industry; the role of the federal government and state legislatures in its development; and the present and potential relationship of unregulated gaming operations with this industry.

We appreciate the opportunity to present our views and hope they will contribute to the development of a fair and enforceable policy on gambling on Indian lands.

THE PARI-MUTUEL RACING INDUSTRY

Legal wagering on horse races is permitted in 36 states, and there is an active horse business in all 50 states. In many, the cash contribution of the racing and racehorse breeding industry to local economies is dramatically large, to such an extent that horses rank among the state's most significant economic entities.

In California and New York, for example, horses and horse related businesses account for cash contributions to each state's economy which exceed $2 billion annually. In Florida, Illinois, New Jersey, Ohio, Pennsylvania, Kentucky, Maryland and Michigan, this economic impact has been estimated at or around $1 billion annually. The employment accounted for by horse racing businesses and farms in each of these states ranges from 15,000 to 35,000 jobs and averages about 22,000 jobs per state.

Many other states, including Arizona, Oklahoma and Texas, house extremely large and active horse industries as well. Still others, among them Alabama, Georgia, Iowa, Minnesota, Missouri and Tennessee, have recently passed or are actively considering legislation which would encourage the expansion of their home-grown horse industries to include horse racing and racehorse breeding.

The 36 states which allow legalized wagering on horse races derive close to $1 billion in direct state and local tax revenue from wagering taxes each year. In each of these states, strict state oversight and regulation has accompanied the introduction and growth of pari-mutuel wagering on racing events.

The pari-mutuel industry in each state is regulated by an agency most commonly known as the state racing commission. Among commission prerogatives are the licensing of horse and track owners, trainers, jockeys, drivers, and all others involved in the pari-mutuel sport, and the promulgation and enforcement of the specific regulations under which the industry must operate.

All matters pertaining to the operation of pari-mutuel racing flow through these agencies acting on behalf of the governors and state legislatures.

FEDERAL AND STATE GAMBLING POLICY

Over the years, the states have consistently acted on the perceived need to closely regulate legal wagering and protect the public's interest in pari-mutuel sports. The actions of state legislatures and the racing commissions which carry out their policies have been predicated on the desire to (1) maintain the integrity of the events on which the public is allowed to wager; (2) oversee the state's tax-related interest in that legal wagering; (3) insure that licensees meet specific standards of qualification; and thereby (4) control any criminal activities which may associate with the wagering aspects of the sport.

The federal government has, in the past, echoed the clear, unequivocal position taken by the states that gambling matters are of such import as to demand regulatory attention. A specific example can be found as recently as 1978, when the Congress passed and the President signed into law the Interstate Horse Racing Act, industry-supported legislation designed to prevent the unregulated growth of off-track wagering in this country.

As a matter of policy precedent to this act, the Congress found that "the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders" and that the federal government should "act to protect identifiable national interests" associated with gambling matters.

Prior to this statement of policy, Congress had exerted its powers to " . . . assist the various states . . . in the enforcement of their (gambling) laws . . . " (18 U.S.C. 1084) and consistently exercised that enforcement through the Department of Justice.

WAGERING ON INDIAN LANDS

The American Horse Council and the pari-mutuel interests it represents do not unconditionally oppose the development of horse racing operations on protected Indian lands. We do, however, oppose and urge Congress to consider the ramifications of unregulated, uncontrolled expansion in such areas.

The growth of bingo operations on protected Indian lands has become an item of national concern, if only due to questions it has raised about the ability of those involved to adequately manage and control an area traditionally overseen by government. Recent suggestions that further expansion in this unregulated area is likely to include race track operations and periodic announcements of projects of this type have, not surprisingly, raised concerns in the existing horse racing industry about the potential effects of such a course.

The operation of race tracks outside the accepted regulatory schemes of the states could do great damage to the public belief in integrity and honesty the states have sought to uphold with their pari-mutuel laws. The perception and reality of honest racing consumes the time, effort and money of the states which house pari-mutuel sports; development of wagering outlets beyond their purview would do direct damage to that objective.

On a more fundamental level, operators in the legal industry today and the law enforcement officials who work with them will readily attest to the attractiveness such unregulated, cash-intensive operations could have for criminal elements. This is not a condemnation of the legal wagering industry but rather a recognition of the role regulation plays in its ability to remain above suspicion.

As you can see, the matter of regulation is not a minor issue in our industry. The integrity of racing events, the protection of the public interest and the use of the state's licensing powers and law enforcement capabilities to exclude unwanted elements remain a central focus.

There is, in sum, good reason for extensive state involvement in wagering industries and compelling cause for delegation by the federal government to the states of authority to oversee this area.

CONCLUSIONS AND RECOMMENDATIONS

We feel it is within the power of, and of immediate importance for the Congress of the United States to specify state oversight, licensing and regulation of gambling establishments on Indian lands consistent with, and no more or less extensive than, the authority now exercised on non-Indian jurisdictions.

We reach this conclusion based on the demands of the existing, productive pari-mutuel horse racing and breeding industry and the critical matters of regulation and law enforcement outlined above.

This matter is of sufficient concern to merit federal action, given the past decisions of Congress to exert authority on gambling-related matters. We feel strongly, however, that the states are in the best position to implement existing regulatory systems and incorporate the matters associated with gambling on Indian lands into them.

The same tests for licensing qualification, financial stability and regulatory enforcement now applied to existing and potential new operations on non-Indian lands have no less application to Indian projects. By the same standard, Indian projects are no less vulnerable to problems associated with unregulated gambling than are non-Indian operations.

On behalf of the American Horse Council, I want to thank this committee for considering our views on this issue.

Mr. TAYLOR. I would like to call Chairman Tullis of the Poarch Band of Creeks; and Dave Anderson of the Lac Courte Oreilles Tribe in Hayward, WI; and James Billie of the Seminole Tribe of Florida.

Mr. Tullis, since you're at the top of the list, why don't you start first?

STATEMENT OF EDDIE L. TULLIS, CHAIRMAN, POARCH BAND OF CREEK INDIANS, ATMORE, AL

Mr. TULLIS. Mr. Taylor, for the sake of time, I have prepared a written statement and provided a copy of it. I would request that it be made a part of the record. In order to save time, I will summarize what I did say in that.

First, I would like to personally extend my appreciation and my tribe's appreciation to Senator DeConcini and his staff for putting this bill before the Congress, and I certainly want to express that appreciation to this committee and your staff for holding these hearings so that we can begin this discussion on something that I feel is very critical to American Indians throughout this country.

I would encourage this committee and Senator DeConcini's staff to proceed with all deliberate speed and effort on this bill for two reasons. One is for this Congress to reassert the fact that it is this Congress that should deal with Indian tribes throughout the country and not renege that responsibility to some of the States where we see a lot of the mechanisms of that State controlled by overzealous, misdirected public officials who do not even have the respect for the courts that they are charged to uphold. So I think it is very critical that we have legislation passed through this Congress in the very near future.

On a personal note, I would like to tell you that the Poarch Band of Creek Indians began operation of a high stakes bingo operation on our reservation on April 13 of this past year. I can truly say that there has been a remarkable change in the status of the Poarch Band of Creek Indians. For the first time in the history of the tribe, we now have unobligated funds that the tribal council can use to do those things that are really a priority in our community, and we have already begun to see a significant change in not only the attitude but in the ability of our people to address some of their needs.

Since the fourth day of December last year, we have put into the local economy in excess of $2.4 million. This is money that has been brought into the economy of a very economically depressed county. Due to the fact of that economic input the tribal community as well as the county commissioners or the board of county commissioners of our local county, the mayor and the city council of the local community in the nearest town to us, the local district attorney, the county judge, have all been supportive of the establishment of high stakes bingo on the Poarch Creek Reservation.

I also want to say that high stakes bingo has had a significant impact on the unemployment in my tribe and the local community. We now have 129 people employed. Forty-one of those are tribal members, 88 of them are nontribal members. Tribal members are employed in all levels of the management. The top manager of our bingo operation is a nontribal member, but that was a necessity due to the fact that we did not have a tribal member that had any single experience operating a bingo operation.

We do have a management company that has a 5-year contract. We feel very comfortable now after only 2 months of operation, that when that 5 years is up, the Poarch Band of Creeks will be a totally tribally operated and owned operation.

We do encourage you and we do appreciate the efforts of this committee to protect that resource that we do have there now. I appreciate the opportunity to be here today.

[The prepared statement follows:]

PREPARED STATEMENT OF EDDIE L. TULLIS, CHAIRMAN, POARCH BAND OF CREEK INDIANS, ATMORE, ALABAMA

Mr. Chairman, members of the committee: My name is Eddie Tullis and I'm the elected tribal chairman of the Poarch Band of Creek Indians. We're located in rural Escambia County in Alabama. On behalf of my people and as an advocate of self-determination and ecomonic self-sufficiency for Indian tribes, I support the intent of S. 902. This bill will assure a tribe's ability to continue gaming as a viable source of revenue and will protect us from legislation that would allow States to regulate these activities on the reservation. If we do not establish regulations and standards of conduct, someone else will.

My statement addresses two fundamental concerns which need to be understood if we are to form a consensus on gaming legislation:

First, there is a real concern that the proposed legislation is an infringement on tribal sovereignty. In my opinion, to support the concept of S. 902 demonstrates that tribal governments intend to control their own affairs. Indian tribes have a right to expect the U.S. Congress to reaffirm and clarify Federal law as it applies to activities on the reservations.

Second, the general public does not realize that revenue from gaming activities provides an economic base for growth on Indian reservations. For the first time in history, gaming revenue provides the opportunity for tribal governments to develop businesses and create jobs. It is our responsibility to communicate that gaming revenue makes a positive impact on Indian country.

In April, my tribe began operation of high-stakes bingo. The decision to pursue the venture was based, solely, on the anticipated revenue. High unemployment and the shrinking Federal budget created a crisis situation in an already economically depressed area. The Bingo business has created 120 new jobs with economic impact evident on service-related businesses within the area. Project proceeds from the Bingo operation will be used as follows:

(1) *Leverage Funding*—The tribe is negotiating the purchase of the Best Western Motel and Restaurant at the I-65 exit adjacent to the Bingo hall. This will provide income and employment for tribal members;

(2) *Operation and Maintenance Costs*—Construction of a million-dollar tribal center will begin in September, 1985. This facility will house the health clinic, community meeting space, learning resource center and administrative offices;

(3) *Land Acquisition*—The tribe is investigating purchase of a 1,500 acre farm and has already purchased 10 acres of land adjacent to the Bingo facility;

(4) *Education*—Funds will be used to equip the lifelong learning center, provide vocational training, higher education scholarships; and,

(5) *Strengthen Tribal Government*—The tribe is in the process of developing constitutional government and administrative systems that will provide efficient, effective management of resources.

The tribal council is committed to providing educational opportunities and a job for each adult member of the tribe. Bingo revenue will make the difference on the Poarch Creek Reservation.

Generally, support of the Bingo operation has been favorable because of our success in communicating the intended use of funds, our ability to include the non-Indian community, and the confidence of all parties in the integrity of the governing body of the tribe to maintain control of the operation. Gaming is recognized as a legitimate source of revenue by all governments; however, the threat of losing this source of revenue is ever-present. Variations in State law and the absence of regulations and standards on Indian gaming leaves tribal governments subject to crisis legislation. To prevent this, I support S. 902.

Mr. Chairman, I extend appreciation to Senator DeConcini for efforts to create a bill that would provide procedures and clarify gaming activities in Indian country.

I appreciate the opportunity to present this statement.

Mr. TAYLOR. Thank you very much.

Mr. Billie?

STATEMENT OF JAMES E. BILLIE, CHAIRMAN, SEMINOLE TRIBE, HOLLYWOOD, FL

Mr. BILLIE. I want to thank you and this committee for time and effort that you have put forth in behalf of this important legislation. I am honored to have this opportunity to appear before you today as you consider this bill to establish Federal standards for gaming activities on Indian lands.

My name is James Billie. I am the chairman of the Seminole Tribe of Florida, and I speak today in behalf of 1,630 members of my tribe who reside on our three reservations and other trust lands in Florida. These 1,630 people have been the direct beneficiaries of the Seminole Tribe's ability to conduct high stakes bingo on our lands.

From the start, let me say that the Seminole Tribe of Florida supports the direction of S. 902 to once and forever clear up the questions and uncertainties related to Indian gaming and to set certain standards and guidelines by which Indian tribes can move forward without the constant cloud of never-ending litigation and harassment by the State and local governments where our lands are located.

As you are aware, to date we have been able to rely only on the Federal courts of this Nation to uphold our sovereign right to govern ourselves and to move forward economically toward the self-sufficiency that we and you desire.

As you are aware, Mr. Chairman, the Seminole Tribe's venture into high stakes bingo in late 1979 brought forth the predominant case law relating to Indian gaming. In the case of *Seminole Tribe* vs. *Butterworth,* the court rules that we Indian tribes have the exclusive right to regulate and license gaming on our lands when said gaming is not prohibited by the Federal Government or State within which we reside.

Since *Butterworth* and other favorable rulings in other circuits, some 80 Indian tribes across this Nation are conducting bingo games to raise tribal revenues. Much of this testimony that you are hearing now and was heard in the House hearings last summer regarding similar legislation focuses on the games that Indian tribes have made since the court ruled in our favor and we were able to develop gaming on our reservations.

Certainly the Seminole Tribe of Florida has moved forward in many ways since we began reaping revenues from our bingo operations in 1979. You have heard from others, and I would tell you that from my perspective this income source, this infusion of capital, has helped us to make the tremendous strides in health and education and the general welfare or living standards of our people. Our tribe has made enormous progress toward self-sufficiency as well by using our bingo revenues to help seed other tribal business developments and to assist individual members with loans for their own business ideas, and to obtain the educational values that are not available in institutional learning, the educational values of trial and error.

We could discuss statistical changes since bingo: the fact that our unemployment has gone from 60 percent to the teens; that we will graduate more young people from high school in this decade than were graduated in the entire prebingo history of our tribe; that nobody has to live in a house without plumbing on our reservations anymore. But the most important effect that the gaming has done with the Seminole people isn't one where we can measure with statistical data. The most important element of tribal gaming enterprise, at least in the sense of the Seminole Tribe, is the element of personal pride that we as a nation within a nation have come to have in ourselves and in our cultural heritage.

I strongly believe that you and the members of the committee have seen and can see the positive results that have come about as a result tribal gaming enterprises on our lands. I guess the major concern I have, after having expressed the positive results of our gaming experiences, comes from something my drill sergeant said to me before my first tour in Southeast Asia, and I quote: "If it ain't broke, don't fix it." I don't mean this common phrase in disrespect, but I do feel that I must address some of the provisions of this legislation.

Let me repeat that the Seminole Tribe of Florida supports you and this committee's efforts to put public opinion to rest on the issue of Indian gaming.

The sanction that only the U.S. Congress can give is important to our ability to move forward and will help to remove some of the risk factor around our movement into these enterprises. We feel we have done a good job with self-regulating bingo on our reservations.

I would like to comment on some of the specific provisions of S. 902 regarding outside or non-Indian management investors, specifically section 10 of the bill. We don't feel it would be in the interest of the Seminoles or other Indian tribes or their ability to develop business enterprises if forced to break or modify existing contracts. Would you do business with an entity that is susceptible to this type of situation?

We would recommend that the legislation be modified to grandfather in existing contracts that tribes have gained approval for from the Bureau of Indian Affairs. We agree with the provision that calls for the tribe to maintain 51 percent control, which is universally considered in business as a controlling interest.

We are going to negotiate with an investor for the best deal we can get. If we can command 90 percent because of location and other variables, we will demand it, but the flexibility must be left in our hands.

We are also concerned that the direction of this legislation as currently written takes the Bureau of Indian Affairs to new heights in their ability to control our destiny. We are concerned that the very agency that Congress has created to protect us will be a hindrance to our self-development.

Don't get me wrong—we want the Bureau of Indian Affairs' continued assistance and oversight, but we must be free to negotiate for ourselves.

In closing, let me say that hardly a week goes by that a banker doesn't call up on me seeking business from the Seminole Tribe. Just 5½ years ago I couldn't get beyond the assistant teller in South Florida's banks to talk about bingo. We have young people in our tribe who are not asking if they can go to college but whether they will be accepted in an ivy league college or different types of schools they have.

We are making giant progress and bingo has had a lot to do with it. We are making progress and we are doing it ourselves.

As chairman of the Seminole Tribe, on behalf of my people, I thank you and the members of the committee for the willingness to hear my testimony and for the proven interest in the well-being of the Indian people of this country.

Mr. TAYLOR. Thank you very much.

Mr. Anderson?

STATEMENT OF DAVID W. ANDERSON, LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, HAYWARD, WI

Mr. ANDERSON. My name is David Anderson. I am a tribal member from the Lac Courte Oreilles Tribe in northwestern Wisconsin. I am here today representing our tribal governing board and our views regarding the Indian Gaming Control Act, S. 902.

We would like to express our appreciation to Mr. DeConcini and other members of the committee for working with tribal leaders to develop this legislation. We feel that it is good that we are being made part of this process and that this legislation will protect Indian gaming activities by federally recognized tribes as a means of substantial and increased economic development and our quest to be self-determined and self-sufficient.

Our tribe, which is located probably about approximately 150 miles from any major metropolitan area, has operated bingo for the last 6 years. Our tribe's experience with bingo operations and the concern for the future of our bingo operation causes us to support the underlying purpose and intent of Federal legislation.

The Lac Courte Oreilles Band, like other Indian tribes throughout the country, is seriously hampered in its efforts to expand and develop reservation economy. Major factors are the lack of equity or investment funds, the distance from commercial areas and markets, the lack of entrepreneurial skills, our relatively small population, and a minimal or nonexistent tax base.

Like other sovereign tribal governments, the Lac Courte Oreilles governing body has attempted to develop the existing opportunities for economic independence through the operation of bingo games.

For the Lac Courte Oreilles Tribe, bingo has proved and provided a key opportunity to further our economic development plans. In the last several years revenue from bingo has provided seed money for the tribal economic development ventures. It has increased employment by 30 or 40 new jobs, which were so badly needed given our tribe faces a 60-percent unemployment rate.

In addition, our tribe, like many other tribes, has faced rapidly decreasing Federal funds. By using bingo revenue, we have been able to continue operating important tribal programs and tribal government, which includes administration, health, and education.

In Wisconsin and in our county tourism is a major industry. Through our tribally owned bingo, we have added a new dimension, we feel, to our tourist area. We bring in people from close to six different States and we have become one of the largest tourist attractions on a nightly basis. The people that we bring in, they fill up the local resorts and fill up the motels; they fill up every tourist operation that there is.

Like some of the other people have stated earlier, I think it needs to be emphasized as to the impact that we have had on the local economy. I know just in the last year we have pumped several millions of dollars into our local economy, and I have included that information with this.

We went back through the last several years, from the years 1980 to 1983, we estimate that through the different businesses that we have been able to establish that were all provided or helped from the seed money from bingo, that we have pumped close to $40 million into the local economy. That is through our payroll and payments to vendors and suppliers who supply the tribe. I think that is a very important impact that needs to be emphasized.

I would like to also point out that we have also kept bingo in its proper perspective. We have only used it as a stepping stone to further our overall economic development plans. We have not allowed ourselves to place all the eggs into one basket.

From bingo and also working with other departments, we have been able to build a pretty substantial economic foundation that our tribe is beginning to realize.

In addition to bingo, we also own a fair-sized supermarket, a gas station, a convenience store, an auto repair center, a cranberry marsh, a construction company, forest products, a sawmill, a graphic arts and print shop, and a restaurant. A lot of this has been from our being able to operate bingo games.

I think, for the purposes of time, I will kind of cut this short.

We do have some questions with the bill the way it is written regarding commissions, especially regional commissions. We feel that the tribe, through its constitution, is the proper authority to authorize, license, and regulate the gaming activities within our tribe. I take exception to Mr. Corona from the attorney general saying that Indian bingos are corrupt, that there is violence and all this type of thing. I think that that should be left to whatever problems he has, but I know within our State and within our own tribe that we are totally free from any corruption. The tribe has been recognized by the Governor of the State as running a very well-organized operation. I think these things need to be emphasized—that tribes are proper authorities, do have the necessary avenues to carry these things out.

I guess, just in summary, the Lac Courte Oreilles Tribe recognizes the need for Federal legislation to protect our ability to conduct bingo games on our reservation. Bingo has provided the Lac Courte Oreilles Tribe with an important financial resource that has helped to strengthen our tribal government as well as providing much opportunities for training, skills development, and employment.

Probably just as important is the positive and substantial economic impact our tribally owned bingo has contributed to the surrounding local economy. As a result, we are bridging the gap between the tribe and the non-Indian community.

I want to thank you for allowing us to testify before the committee.

[The prepared statement follows:]

Prepared Statement of David W. Anderson, Member, Lac Courte Oreilles Band of Lake Superior Chippewa Indians

Mr. Chairman and Members of the Committee: My name is David W. Anderson, I am a tribal member of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians. I am here today on behalf of the Lac Courte Oreilies Tribal Governing Board to present the views of the Lac Courte Oreilles Tribe regarding S.902 "Indian Gaming Control Act" as introduced by Mr. DeConcini before the United States Senate.

Mr. Chairman, on behalf of the Lac Courte Oreilles Tribe, we would like to commend the efforts of Mr. DeConcini and to express our sincere appreciation to this Committee for their commitment in working with tribal leaders to develop legislation which will protect Indian gaming activities by Federally recognized Indian Tribes as a means of substantial and increased economic development in the tribes' quest to be self-determined and self-sufficient.

The Lac Courte Oreilles tribe is located in northwestern Wisconsin, approximately 150 miles from the nearest major metropolitan city and has operated for the last six years a competely tribally owned and operated bingo game. My Tribe's experience with bingo operations and concern for the future of our bingo operation causes us to support the underlying purpose and intent of federal legislation.

The Lac Courte Oreilles Band, like other Indian tribes throughout the country, is seriously hampered in its efforts to expand and develop the reservation economy. Major factors are: 1) lack of equity or investment funds, 2) distance from commercial areas and markets, 3) lack of entrepreneurial skills, 4) our relatively small population and, 5) a minimal or nonexistent tax base. Like other sovereign tribal governments, the Lac Courte Oreilles governing body has attempted to develop existing opportunities for economic independence through the operation of bingo games. For the Lac Courte Oreilles Tribe, bingo has provided a key opportunity to further our economic development plans.

In the last several years, revenue from bingo has provided seed money for tribal economic development ventures. It has increased employment by 30 new jobs, which were so badly needed given a 60% unemployment rate. In addition, our tribe, like so many other tribes has faced rapidly decreasing federal funds. By using bingo revenue, we have been able to continue operating important tribal programs and tribal government, which includes administration, health and education.

In Wisconsin and in our county, tourism is a major industry. Through our tribally-owned Bingo, we have added a "new dimension" to tourism. Averaging 250-300 people per night, 6 days a week and up to 700 people for a major event, we have become one of the largest tourist attractions on a nightly basis in our area. We attract people from six states, who in turn contribute to the local economy by spending money at resorts, motels, restaurants, gas stations, and grocery stores. In 1984 alone, our bingo operation pumped close to $1,000,000 into the local economy by spending $531,862 with local vendors and suppliers; and $285,428 in payroll, and other expenditures. See Addendum.

I must point out that we have kept bingo in its proper perspective, using it only as a "stepping stone" to further our over-all economic development plans. We have not allowed ourselves to place all our "eggs into one basket". Bingo only represents about 35% of our total economic development efforts and does not constitute the sole foundation for present and future economic development activity. In addition to our Bingo operation, our tribe also owns and operates a Supermarket, Gas Station/Convenience Store/Auto Repair, Cranberry Marsh, Construction Company, Forest Products and Saw Mill, and Graphic Arts and Printshop, and Restaurant.

Although federal legislation may not be absolutely necessary in order for the Lac Courte Oreilles tribal bingo to continue its current operations, see Oneida Tribe of Indians, Wisconsin V. Wisconsin, 518 F Supp. 712 (1981), the Lac Courte Oreilles Tribe feels that federal legislation will ensure that tribally-owned bingo games will continue at Lac Courte Oreilles. Most importantly, federal legislation will preserve sovereign tribal control over gaming activities in the face of mounting pressures to increase state control over such activities.

In general, Lac Courte Oreilles supports the underlying purpose and intent of S.902 especially Section 2, which recognizes the need for federal legislation that will protect tribal gaming activities in order to promote strong tribal governments, tribal self-sufficiency, and tribal economic development, and keeping these activities free from crime. It should be emphasized that the Lac Courte Oreilles Tribe feels that it is a exclusive right of Indian Tribes to regulate gaming activities within the reservation, as a means to generate revenue for governmental operations and programs that will promote tribal self-sufficiency and increased economic development activity.

We feel that Section 6 is important in that it provides federal protection so that Indian Tribes may engage in or license and regulate such gaming activity within its jurisdiction if the governing body of the tribe adopts an ordinance or resolution that is approved by the Secretary, except where a gaming activity is specifically prohibited within Indian Country by Federal law or within a State by State public policy as a matter of criminal law. We feel that this is necessary to ensure that bingo remains a matter of tribal sovereignty and necessary to keep tribal gaming activities from falling into the jurisdication of the State. Further, the Lac Courte Oreilles Tribe feels that any influence attempted by the State would be an intrusion into tribal sovereignty as protected by our federal trust status.

Although, the Lac Courte Oreilles Tribe appreciates the intent of S.902 to protect gaming activities by Indian Tribes through federal legislation, the Lac Courte Oreilles Tribe has chosen not to support S.902 "Indian Gaming Control Act: for the following reason: S.902 provides for the development of a "Commission" or "Regional Commission" to regulate the gaming activities by Indian Tribes. Lac Courte Oreilles is of the opinion that this proposed Commission and other provisions in this proposed legislation unnecessarily intrudes into the internal matters of the tribe.

We feel that through our Constitution and by resolution or ordinances, our Tribal Governing Body is in effect the only "Commission" our Tribe needs to regulate our gaming activities. This proposed commission does nothing more than add another layer of bureaucracy which does nothing to enhance the legitimacy of the tribal ordinance. Further, another example of such intrusion is the absolute requirement that all tribal gaming ordinances be approved by the Secretary of the Interior. Such authority is not necessary in order to obtain the purpose of the legislation, which is Indian Country gaming, which is regulated by a tribe: any tribal ordinance which does not contain the requiste provisions described in Section 6 (b) of the bill is not sufficient to legalize the activity. Only those tribes whose Consitutions require Secretarial approval for such ordinances as one regulating gaming should need that approval, for this merely recognizes the tribe's Consititution as directing the manner and means by which tribal governments shall exercise tribal regulatory power.

Lac Courte Oreilles also has similar problems with the bill's authorization for the Secretary to inspect all premises on which gaming occurs and to have unlimited access to tribal books and records concerning gaming operations. Secretarial inspection and access should be limited to those circumstances in which a management contract exists between a tribe and another organization. If a tribe does have such an arrangement then it would also be advisable that the Secretary have these same expressed rights to all financial documents of the management company as well. The Lac Courte Oreilles Tribe feels that if such a need presents itself there are current legal avenues available whereby necessary documents may be demanded when a legitimate need arises.

The Lac Courte Oreilles Tribe has not needed to seek outside management of its bingo games, nor is any such outside involvement contemplated. For this reason, the bill's provisions concerning outside management are viewed by my tribe as a matter best addressed by those tribes which have experience with outside management of tribal gaming activities. However, as a general matter, we feel that there needs to be strict guidelines regarding outside management companies as the problems created and the actions needed to resolve them may jeopardize the ability of all tribes to engage in gaming activities. Further, if a conflict does arise and a decision by the Secretary is necessary to resolve the matter, this decision should be made within 90 days. At all times the best interests of the tribe should be the underlying foundation for any decision.

In summary, the Lac Courte Oreilles Tribe recognizes the need for federal legislation to protect our ability to conduct bingo games on our reservation. Bingo has provided the Lac Courte Oreilles Tribe with an important financial resource that has helped to strengthen our tribal government as well as providing much need opportunities for training, skills development and employment. Probably, just as important is the positive and substantial economic impact our tribally owned bingo has contributed to the surrounding local economy. As a result, we are bridging the gap between our Tribe and the non-Indian community.

The Lac Courte Oreilles bingo operation is a success story. It demonstrates the ability of a tribe to develop, operate and manage a economic activity of substantial size and revenue. Our insistance and commitment to organization, accountability, security, integrity, professionalism and, most importantly, customer service has done much to add to the credibility of the Lac Courte Oreilles Tribe and its Governing Body as well as Indians generally.

Mr. Chairman and Members of the Committee, on behalf of the Lac Courte Oreilles Tribal Governing Board and the Lac Courte Oreilles Tribe, I would like to thank you for allowing us to testify before your Committee and to express our support for federal legislation. However, as written, we cannot give our support for S.902. We strongly urge this Committee to consider our concerns as outlined in this testimony and make the necessary changes. For the record, our Tribe is supporting approval of H.R.1920 "Indian Gaming Control Act", and urge this Committee to reference this bill in revising S.902. Thank You.

LCO TRIBAL GAMES
INCOME STATEMENT
FOR THE ELEVEN MONTHS ENDING MAR. 31, 1985

ACCOUNT	DESCRIPTION	CURRENT	%	YEAR-TO-DATE	%
GROSS SALES					
4006	SALES CIGARETTTES	1,838.60 CR	0.8	34,644.38 CR	1.3
4091	VEGAS SALES	22,551.00 CR	9.8	374,239.96 CR	14.3
4092	BINGO GATE SALES	193,679.15 CR	84.3	2,103,389.29 CR	79.3
4093	REST/CONCESS SALES.	11,339.10 CR	4.9	144,139.11 CR	5.4
4094	SKATE & MOVIE SALES	308.20 CR	0.1	1,309.76 CR	0.0
4095	VIDEO MACHINE REVENU	0.00	0.0	1,994.00 CR	0.1
	TOTAL GROSS SALES	229,716.05 CR	100.0	2,659,716.50 CR	100.0
COST OF GOODS SOLD					
5009	COS-CIGARETTES	532.35 DR	0.2	17,232.48 DR	0.6
5031	B FOOD ITEMS	6,747.53 DR	2.9	101,380.09 DR	3.8
5032	B PERISH CONCESS SUP	1,102.15 DR	0.5	11,293.85 DR	0.4
5033	B CONCESS EQUIPMENT	950.00 DR	0.4	6,565.49 DR	0.2
5035	B-RESALE B. SUPPLIES	742.91 DR	0.3	18,276.66 DR	0.7
5036	B VEGAS TICKETS	1,328.55 DR	0.6	40,524.93 DR	1.5
6791	BINGO PRIZES-CASH	126,829.00 DR	55.2	1,414,102.25 DR	53.2
6792	BINGO PRIZES-AUTO	0.00	0.0	19,800.00 DR	0.7
6793	BINGO PRIZES-OTHER	498.00 DR	0.2	28,050.85 DR	1.1
	TOTAL COST OF GOODS SOLD	138,730.49 DR	60.4	1,657,426.60 DR	62.3
	GROSS PROFIT	90,985.56 CR	39.6	1,002,289.90 CR	37.7
SALARIES AND WAGES					
6061	PAYROLL	5,257.02 DR	2.3	21,073.30 DR	0.8
6200	PERFORMANCE BONUSES	600.00 DR	0.3	4,075.00 DR	0.2
6751	B P/R-FOOD SERVICE	3,143.54 DR	1.4	58,681.82 DR	2.2
6752	B P/R-VEGAS	2,531.44 DR	1.1	33,052.62 DR	1.2
6753	B P/R-BINGO	3,924.74 DR	1.7	59,645.73 DR	2.2
6754	B P/R-MGT.	5,568.34 DR	2.4	63,101.11 DR	2.4
6755	B P/R-MAINT.	1,105.17 DR	0.5	21,690.31 DR	0.8
6756	B P/R-SECURITY	1,815.05 DR	0.8	24,108.98 DR	0.9
	TOTAL SALARIES AND WAGES	23,945.30 DR	10.4	285,428.87 DR	10.7
TAXES-OTHER FRINGE BENEFITS					
6220	PAYROLL TAXES	977.84 DR	0.4	3,204.57 DR	0.1
6225	B UNIFORM ALLOW.	0.00	0.0	2,054.65 DR	0.1
6230	OTHER FRINGE BENEFIT	0.00	0.0	0.00	0.0
6781	B FRINGE-FOOD SERV.	727.95 DR	0.3	11,035.08 DR	0.4
6782	B FRINGE-VEGAS	547.32 DR	0.2	5,293.52 DR	0.2
6783	B FRINGE-BINGO	700.66 DR	0.3	10,230.21 DR	0.4
6784	B FRINGE-MGT.	1,035.69 DR	0.5	8,648.48 DR	0.3
6785	B FRINGE-MAINT.	205.56 DR	0.1	3,419.06 DR	0.1
6786	B FRINGE-SECURITY	278.88 DR	0.1	3,358.62 DR	0.1
	TOTAL TAXES-OTHER FRINGE B	4,473.90 DR	1.9	47,244.19 DR	1.8

LCO TRIBAL GAMES
INCOME STATEMENT
FOR THE ELEVEN MONTHS ENDING MAR 31, 1985

PAGE 2

ACCOUNT	DESCRIPTION	CURRENT	%	YEAR-TO-DATE	%
DEPRECIATION EXPENSE					
6051	DEPRECIATION EXPENSE	2,388.91 DR	1.0	28,666.92 DR	1.1
	TOTAL DEPRECIATION EXPENSE	2,388.91 DR	1.0	28,666.92 DR	1.1
INTEREST EXPENSE					
6059	INTEREST EXPENSE	2,924.11 DR	1.3	24,568.66 DR	0.9
	TOTAL INTEREST EXPENSE	2,924.11 DR	1.3	24,568.66 DR	0.9
OTHER OPERATING EXPENSE					
6047	BAD DEBT EXPENSE	12,720.00 DR	5.5	12,720.00 DR	0.5
6048	NSF CHECK EXPENSE	134.00 DR	0.1	213.55 CR	0.0
6049	CASH OVER - SHORT	99.60 DR	0.0	171.77 CR	0.0
6055	LCO GROSS RECPTS TAX	25,000.00 DR	10.9	54,100.80 DR	2.0
6250	OPERATING SUPPLIES	1,034.11 DR	0.5	7,714.14 DR	0.3
6280	OFF. SUPPLY-POSTAGE	682.57 DR	0.3	5,510.92 DR	0.2
6300	PRINTING & COPING	0.00	0.0	3,046.03 DR	0.1
6310	LINEN	0.00	0.0	1,996.17 DR	0.1
6330	FUEL-VEHI. & EQUIP.	207.44 DR	0.1	3,642.20 DR	0.1
6335	BINGO BUS REBATES	18,775.00 DR	8.2	138,071.02 DR	5.2
6360	MAINT-VEHC.MACH.EGIP	31.20 DR	0.0	818.75 DR	0.0
6390	MAINT.-OTHER ASSETS	36.03 DR	0.0	11,558.25 DR	0.4
6410	TRAVEL	257.22 DR	0.1	7,208.72 DR	0.3
6421	FREIGHT CHARGES	0.00	0.0	236.44 CR	0.0
6440	PERSONNEL PROCURE.	0.00	0.0	0.00	0.0
6470	CONSULT & PROF FEES.	0.00	0.0	8,938.60 DR	0.3
6475	SNOW REMOVAL	230.00 DR	0.1	1,025.00 DR	0.0
6476	GARBAGE REMOVAL	20.00 DR	0.0	5,585.00 DR	0.2
6480	DATA PROCESSING SERV	0.00	0.0	315.00 DR	0.0
6500	RENT(SPACE & EQUIP.)	0.00	0.0	0.00	0.0
6530	DONATIONS	0.00	0.0	4,485.33 DR	0.2
6560	BOOKS, DUES, SUBSCP.	0.00	0.0	124.00 DR	0.0
6580	TRAINING COSTS	0.00	0.0	894.46 DR	0.0
6590	MEETINGS AND SEMINAR	35.50 DR	0.0	2,665.80 DR	0.1
6620	ADVERTISING NON RECR	7,642.15 DR	3.3	64,097.83 DR	2.4
6650	INSURANCE	540.17 CR	0.2	3,497.89 DR	0.1
6680	HEAT AND LIGHT	1,438.47 DR	0.6	13,258.88 DR	0.5
6710	TELEPHONE	320.23 DR	0.1	4,841.98 DR	0.2
6740	MISCELLANEOUS EXP.	30.00 DR	0.0	1,687.29 DR	0.1
	TOTAL OTHER OPERATING EXPE	68,153.35 DR	29.7	357,181.30 DR	13.4
OTHER INCOME EXPENSE					
6054	B LADIES AUX PAYMENT	0.00	0.0	0.00	0.0
6910	GAIN-LOSS DISP OF FA	0.00	0.0	0.00	0.0
6920	OTHER INCOME	0.00	0.0	0.00	0.0
6930	OTHER EXPENSE	0.00	0.0	0.00	0.0
	TOTAL OTHER INCOME EXPENSE	0.00	0.0	0.00	0.0
	TOTAL EXPENSES	101,885.57	44.4	743,089.94	27.9
	NET PROFIT	10,900.01-	4.7	259,199.96	9.7

HOW LAC COURTE OREILLES ECONOMICALLY IMPACTS

THE SAWYER COUNTY AREA

Combined Disbursements:	1980 through 1983	1983 only
Gross Payroll	$13,387,000	$3,725,000
Payments to Vendors	26,916,000	8,373,000
TOTAL	$40,303,000	$12,098,000

Payroll Taxes paid 1980 through 1983:

	Tribal Employees	Tribal Government
Federal	$ 3,497,000	$ 60,000
State	151,000	637,000
TOTAL	$ 3,648,000	$ 697,000

Combined accounting and census statistics:

On average the Tribe employs 310 people.

Of employed Tribal members, 24% are self-employed or work for non-Tribal employers.

In 1983 while the Tribe employed one hundred thirteen non-members, our census identified less than sixty tribal members working for area non-Indian businesses.

On average, 17% of our total workforce is non-Indian.

In the past four years, Tribal non-government payroll has increased from 21.6 to 30.3 percent of total payroll.

Indians living off the reservation pay all Federal, State and local taxes.

Many Tribal members pay property taxes on "fee land" on and off the reservation.

Indians living on the reservation pay Federal income, social security, estate federal & excise tax, fuel and liquor taxes.

The Tribe receives no tax revenues from its own potential taxing authority.

These economic statistics have been compiled from Lac Courte Oreilles Tribal Government accounting records, Tribal Enterprises and from the 1983 census of LCO Tribal members living on or near the LCO reservation.

Mr. **Taylor**. Thank you very much for your testimony.

I would like now to call Tim Love, governor of the Penobscot Tribe of Old Town, ME, and Richard Hayward, chairman of the Mashantucket Pequot Tribe in Connecticut. Let's see if we can get someone else up here. Is Connie McCloud here? I would like to call Connie McCloud of the Puyallup Tribal Council, accompanied by Joe Bowen.

We have somewhere around 40 minutes left to go and a few more witnesses. If you all could summarize, any written statements you have will be made a part of the record. If you choose to supplement, the record will stay open another 2 weeks.

Governor Love, why don't you lead the parade here?

STATEMENT OF TIM LOVE, GOVERNOR, PENOBSCOT TRIBE, OLD TOWN, ME

Mr. **Love**. Thank you, Pete.

My name is Tim Love. I am the governor of the Penobscot Nation in the State of Maine. I would like to go on record as part of the USET organization in thanking Senator DeConcini and also Senator Cohen of Maine, who has come on as a cosponsor of S. 902.

We firmly believe that the time has come for the tribes within the United States of America to stop talking about how we are going to protect ourselves and start doing something about it. I think over the past few years there has been a lot of discussion, a lot of dissension. Frankly, nobody likes to have Federal regulations imposed upon them. My tribe knows as well as any because we lost a court case 2 years ago in the State supreme court. It was upheld by the U.S. Supreme Court, dealing with bingo. But because of our unique status and jurisdictional relationship, that occurred.

What we have today before this committee—and I hope ultimately passed by the Congress—is a bill that is a start. It will give us a chance to get that relationship that needs to be established between the Congress of the United States and the tribes. I honestly believe that we are playing Russian roulette with the court system of this country because there have been many cases on the bingo and gaming issue, and the U.S. Supreme Court has yet to take one to rule on that regulatory relationship. I think we are foolhardy if we think we can go on forever expecting the court to ignore making a decision on that. I just think the time has come for us to face up to the fact that we need to establish that link to protect ourselves. It is not something we want, but it is something that is necessary.

I will ask this committee and Congress for their support. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF THE PENOBSCOT INDIAN NATION, PRESENTED BY TIM LOVE, GOVERNOR

Good afternoon Mr. Chairman, members of the Committee and staff. My name is Tim Love. I am the Governor of the Penobscot Indian Nation of Maine. Penobscot is one of the member Tribes of the United South and Eastern Tribes organization. I would like to state that the Penobscot Indian Nation wholeheartedly agrees with and support the testimony presented by Mr. Lionel John on behalf of USET.

The Penobscot Indian Nation conducted their own BINGO game from 1977 through 1983. In 1983, the Tribe's BINGO operation was closed down because of a ruling by the Maine Supreme Court that the Tribe was subject to the State of Maine's jurisdiction. I would like to point out that this ruling has no precedential effect on any tribe outside of the State of Maine since the ruling turned on the the specific jurisdiction provisions contained in the Maine Indian Land Claims Settlement Act.

Under the Settlement Act, the Penobscot Nation was given municipal status and became responsible to provide a broad range of governmental services, many of which were formerly paid for by the State. The income generated by our BINGO operation provided the revenue to pay for facilities maintenance, our seniors nutrition program, recreation program, water and sewer operation and maintenance, street lighting, road maintenance, and supplemental tribal government administrative costs.

Since our BINGO was closed down, we have had to cover the costs of these programs and services from other tribal revenue sources and from a line of credit which has accummulated a debt of approximately of $500,000 to date.

The Pequot Tribe of Connecticut decided last year to build a BINGO facility on their tribal lands. Because of our experience in operating our own BINGO game for many years and our ability to assist the Pequot Tribe finance their BINGO facility, the Pequot Tribe and the Penobscot Indian Nation have entered into a two year management contract. Under the terms of the contract, the Penobscot Nation will act as guarantor for $2 million of the $3.75 million project and will act as manager for the BINGO game. The Pequot Tribe will pay the Penobscot Nation $250,000 a year, expenses of the management team, and twenty percent of the net revenue after the debt service has been paid.

The revenue which the Penobscot Indian Nation will realize from this contract will enable the Tribe to once again cover the costs of the programs and services previously mentioned without incurring further debt. The Pequot BINGO game will raise critically needed revenue for both Tribes and provide added employment for both Tribes.

While the Penobscot Indian Nation has never encountered efforts of criminal elements or corrupt individuals attempting to infiltrate our gaming operations we strongly feel that S. 902 is needed to provide minimal standards for the operation of Indian gaming and any management contractors who have or may become involved in Indian gaming nationally.

While Indian gaming is not the answer to all of the problems in Indian country, it has served to prevent some tribes from going into bankruptcy and it has enabled many tribes to continue to provide critically needed services and a source of development capital to begin diversifying their economies.

We wish to thank Senator DeConcini and Senator Cohen for sponsoring this legislation and we urge this Committee and Congress to act favorably and expeditiously on S. 902.

Thank you for permitting me time to present the views of the Penobscot Indian Nation on this very important legislative matter.

Mr. TAYLOR. Thank you, Tim.

Chairman Hayward?

STATEMENT OF RICHARD A. HAYWARD, CHAIRMAN, MASHANTUCKET PEQUOT INDIAN TRIBE, LEDYARD, CT

Mr. HAYWARD. Mr. Chairman and members of the committee, my name is Richard Hayward, chairman of the Mashantucket Pequot Tribe. I appreciate the opportunity to submit this statement on S. 902, a bill of great interest to the Mashantucket Pequot Tribe.

The Mashantucket Pequot Tribe supports the intent of S. 902 to establish Federal standards and regulations for the conduct of gaming activities within Indian country. The Mashantucket Tribe has recently made a decision to conduct a high stakes bingo game on the tribe's reservation located in Ledyard, CT. To accomplish this, the tribe has commenced construction of a 37,000-square-foot building and has appointed an independent board of directors for Pequot bingo.

The board of directors has hired a consulting group from the Penobscot Indian Nation as the business manager of Pequot bingo. The Penobscots are highly respected in the New England region for their business acumen, their honesty, and their forthrightness.

The financing for the Pequot bingo project is derived from Government grants and bank loans. Once the bank loan is repaid, all of the revenues will be available to fund Mashantucket Pequot social and economic development projects like our Museum and Indian Research Center.

From our reading of S. 902, we see this proposed legislation establishing minimal Federal standards for Indian bingo. This bill will help insure that criminal elements do not get involved in Indian bingo, and we view this as a positive development. We also see this bill helping to insure that adequate accounting is maintained. This bill would protect tribes against self-dealing by tribal officials, the use of tribal sovereignty as a front for private interests, and unfair bingo management contracts. We view these accomplishments of this proposed legislation as positive developments for Indian country.

In closing, I note that this bill does not expand or diminish the preexisting gaming authorities of Indian tribes. Therefore, we urge your support of S. 902.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF RICHARD A. HAYWARD, CHAIRMAN, MASHANTUCKET PEQUOT TRIBAL COUNCIL

Mr. Chairman and members of the Committee, I am Richard A. Hayward, Chairman of the Mashantucket Pequot Tribal Council. I appreciate the opportunity to submit this statement on S.902, a bill of great interest to the Mashantucket Pequot Tribe.

The Mashantucket Pequot Tribal Council supports the intent of S.902 to establish federal standards and regulations for the conduct of gaming activities within Indian Country. The Mashantucket Pequot Tribal Council has recently made the decision to conduct a high stakes bingo game on the Tribe's Reservation located in Ledyard, Connecticut. To accomplish this, the Tribal Council has commenced the construction of a 34,000 square foot building and has appointed an independent Board of Directors for Pequot Bingo. The Board of Directors has hired a consulting group from the Penobscot Indian Nation as the business manager of Pequot Bingo. The Penobscots are highly respected in the New England region for their business acumen, their honesty and their forthrightness. Financing for the Pequot Bingo Project is derived from government grants and bank loans. Once the bank loan is repayed, all of the revenues will be available to fund Mashantucket Pequot social and economic development projects like our museum and Indian research center.

From our reading of S.902, we see this proposed legislation establishing minimal federal standards for Indian bingo. This bill would help ensure that criminal elements do not get involved in Indian bingo and we view this as a positive development. We, also, see this bill helping to ensure that adequate accounting is maintained. This bill would protect tribes against self-dealing by tribal officials, the use of tribal sovereignty as a front for private interests, and unfair bingo management contracts. We view these accomplishments of this proposed legislation as positive developments for Indian Country.

In closing, we note that this bill does *not* expand or diminish the pre-existing gaming authorities of Indian Tribes. Therefore, we urge your support for S.902.

Mr. TAYLOR. Thank you very much.

Ms. McCloud?

STATEMENT OF CONNIE McCLOUD, PUYALLUP TRIBAL COUNCIL MEMBER, ACCOMPANIED BY JOE BOWEN, COUNSEL

Ms. McCLOUD. Thank you very much.

My name is Connie McCloud. I am a tribal council member for the Puyallup Tribe of Washington State. The Puyallup Tribe would like to submit their written testimony which gives the general overview of our position relating to this bill.

My comments today I would like to direct specifically to a portion of the bill that would greatly hinder the operations of bingo on the Puyallup Reservation. We are a tribe that has had a gaming ordinance in place for 5 years which was approved by the Secretary of the Interior. For 4 years we have had individual tribal members who own, operate, and manage bingo halls on the reservation. Currently, we do have three individual members operating three separate bingo halls within the reservation.

Our reservation's exterior boundaries include 23,000 acres of land. Much of that land is held by non-Indians. The tribal trust land and individual trust land is very small within that exterior boundary. We also have the city of Tacoma, the city of Milton, Puse County, jurisdictions within our reservation.

We are a very urbanized reservation, and those are considerations that our tribe has had to take into consideration when it looked at the issue of gaming on our reservation. When the *Caldwell* decision came out and eliminated the sale of cigarettes on reservations, these were the individuals who were currently at that time operating smokeshops, had businesses on individual properties and on a lot of property. When the sale of cigarettes was eliminated, these were the business people that looked to alternative resources for enterprising and turned to bingo.

Our operations would not be considered high stakes. On an average, 2 to 300 people are seen at each hall on a daily basis. The revenue that the tribe receives from the bingo operations is a tribal tax that the individual bingo operators have to pay to the tribe. It is the sole revenue, of course, of income for our tribe at this time.

I also would like to comment that throughout this last several years the tribe has done other kinds—has looked into other kinds of activities and is currently working on a land negotiation settlement that would provide our tribe with other sources of revenue and other sources of enterprise that would make our tribe economically self-sufficient. But currently, if the individual members were eliminated from operating bingo on our tribe, we would be without any source of income because this is the sole source of revenue for the Puyallup Tribe at this time.

Thank you very much.

[The prepared statement follows:]

PREPARED STATEMENT OF THE PUYALLUP TRIBE OF INDIANS, SUBMITTED BY FRANK WRIGHT, JR., CHAIRMAN

The Puyallup Tribe has existed as a government regulating the conduct of trade and business in the northwestern part of what is now known as the United States since time immemorial. Several diverse forms of business activities, including gaming, has been an important part of our cultural past and remains so today.

The Puyallup Tribe was one of the first tribes to become involved in what is now known as "tribally regulated gaming." We were the first tribe to promulgate and enact our own comprehensive gaming ordinance approximately six years ago. We license and regulate three bingo halls on our reservation. These halls are owned and managed by individual tribal members but are licensed, regulated, and taxed by our tribal government. Our tax amounts to a significant amount of the profit and has become indispensable to our tribe.

The Puyallup Tribe has been involved with the National Task Force on Indian Gaming since its inception nearly two years ago. We have participated in hearings which have been held around the country at several different Indian reservations. For two years we have been visiting the different halls, talking with tribal managers and officials. We have closely interacted with federal officials from both the Interior and Justice Departments. The Task Force after several months of careful deliberation has recommended certain national standards for the tribal gaming industry which has been realized to a significant extent in proposed federal legislation which is before you in the form of H.R. 1920 and S. 902.

The tribally regulated gaming industry in the past several years has grown to become a vital part of the economies of approximately one-half of the Indian tribes in the United States. We feel that it has become an important part of the answer for most of these tribes to what they have traditionally experienced over the last several generations as substandard economies and the poorest of our nation's living conditions. Indian tribes experience the greatest deprivations of any minority group in this country. We have the shortest life expectancy and the highest unemployment of any national group. Within a few short years, tribally regulated gaming has gone a long way to reversing this trend. We personally have witnessed this phenomenon not only on our own reservation, but on the several reservations we visited around the country.

The present administration's Indian Policy Statement clearly acknowledged the need for tribes to become economically self-sufficient and has encouraged the birth of new forms of enterprises on reservations. The above-stated policy recognizes tribe's inherent sovereign right as a government to initiate these types of activities and to be self-regulating in their operation. Our gaming industry is in line with this philosophy and it has worked amazingly well for us. If there exists a need to standardize the industry to some extent through national legislation, we need to be a significant part of that process.

As a result of our experience, we have become very impressed with the professional and highly competent manner in which tribes have regulated and operated their own games. As with any new industry, there always exists some transitional problems. We have seen that where these problems have arisen, they have been adequately addressed and resolved. A few weeks ago, our tribe participated in a working panel before the National Association of Gambling Regulating Agencies. This is an association composed of the various gambling boards of the nation's states and territories. They have been closely following our progress. We were complimented by several members as running very good games. One state alone introduced a resolution against tribally regulated games in favor of the tribes being held to the various state rules for conducting these games. We are very proud to state that this resolution not only did not pass, but *failed* to receive a second on the motion. At the end of the conference, we were invited to join their association. Our tribe plans to do so. It is this kind of government-to-government relationship and respect which needs to be nurtured and supported. The N.A.G.R.A. organization will become an important first step for tribes and states to dialogue and work out mutual problems from a basis of mutual respect instead of discord or from an adverse position.

We are encouraged by this healthy new relationship. It is not the answer to subject tribes to state standards or public policy. There exist mature professional businesslike ways to resolve any mutual concerns. This acknowledgment of tribal sovereignty and the ability of sophisticated self-determination is the level at which tribes operate today. This fact needs to be acknowledged and encouraged. This level of respect needs to be manifested in federal legislation, our own progress must be safeguarded and promoted, not delayed or frustrated from paternalistic legislation regardless of how well-meaning.

Our own tribe has had a long history of business and trade. It was so well-established that our treaty speaks of certain aspects of this trade with other nations. Our tribe has always fostered and encouraged individual economic enterprise. This has been an important part of our cultural past. We manage our bingo halls in the same traditional manner. They are licensed, regulated and taxed by our government. They are operated on lands owned by our individual members. This style of business operation works very well for us. It employs tribal members and provides most of the income which supports our administrative services. This income also supplements our social, educational, and health services which we provide for our community. Federal grants are being reduced at a fast pace. Without this industry, we could not function as a full service government for our people.

The court cases without exception recognize our right to be self-regulating in the gaming industry. We all have worked hard and expended hundreds of thousands of dollars to that end. We believe we have a record of management and self-regulation that equals the record of any state. We are non-transient societies which are tightly knit giving us an advantage of keeping unwanted elements out of our games. We believe that the records of the Justice Department would give us a cleaner bill of health than most states. In short, we are proud of our record in the industry, and recognize that it has become a vital part of our economy.

We support the standards embodied in the legislation which regulates the various non-Indian management groups, it is necessary. We also have seen how well the BIA guidelines for proper review of management groups has worked. They are comprehensive and adequate. While we are completely tribally owned and operated, we support those tribes who needed the capital investment to get started since their own resources have been taken from them by their "neighbors". Tribes should be respected in their desire to retain outside management assistance. Several games around the county are well run and as long as these folks are properly regulated it works out well for all involved.

In regard to the proposed legislation in south H.R. 1920 and S. 902 we strongly oppose any attempt to limit our right to license our own individual members to operate their own games. We also oppose the specific language in the acts which would prohibit our own sovereign right to operate games which might be prohibited by "state public policy as a matter of criminal law". This would again allow state law to dictate over tribal law. This violates a long history of case law and our unique relationship with the federal government.

The above-stated position and our aforementioned supporting history are the main objection which the Puyallup Tribe has to both congressional bills in their present form. We feel that it is completely unacceptable to place us under state standards and restrictions for the conduct of our games. Our right to operate our own vital and well managed individually licensed games cannot and must not be infringed upon. If non-Indian management groups can profit, why can't our own individual tribal members do the same. This enterprise supports several of our families as well as tribal operations. We believe that more careful thought and consideration must go into there provisions of the proposed act.

Thank you for the opportunity to present our input into this most critical legislation.

Reservation Land Sales

In the late 1880s and 1890s there was intense pressure from the business community in Tacoma to open the Puyallup Indian Reservation to sale. The local Indian agent responded to that pressure by recommending that land be opened for sale if it was excess to the needs of the Indian owner, but that land needed by tribal members for homes and related uses not be opened to sale. A commission appointed by congressional act made similar recommendations.

In 1893 Congress created a three-member commission which was instructed to determine which lands within the Reservation were no longer needed by tribal members and to offer for sale those excess lands where the Indian owner consented to the sale. The congressional act also provided that members of the Tribe would be free to sell their land ten years after passage of the act.

Several thousand acres of reservation land were sold out from under the Tribe and its members by the three commissioners pursuant to the congressional act. The methods used to accomplish the sales ranged from highly questionable to outright illegal. For example, signatures of some tribal members were forged on forms giving consent to the sale of land. The Department of the Interior allowed the sales to take place even though the Department knew of the forgeries. Many land sales took place without the consent of the Indian owners. The commission routinely appointed guardians for tribal members. The guardians, who were influential members of the business community, would give consent on behalf of the Indians. By these and a variety of other methods, the federal commission in the Tacoma business community accomplished a transfer of several thousand acres of Reservation land in violation of the spirit or letter of the congressional act, or both. As a result of the "sales" made by the commission and the loss of land after the restrictions on sale were lifted, the Tribe and its members are left with only a few acres of land.

It should be noted that despite the "sale" of much of the reservation land to non-Indians, the boundaries of the Puyallup Indian Reservation remained intact. The Ninth Circuit Court of Appeals ruled that the purpose of the 1893 congressional act was simply to allow purchase of lands by non-Indians and was not intended to and did not change the reservation boundaries. *United States* v. *Washington*, 496 F.2d 620 (9th Cir. 1974), *cert. denied*, 109 U.S. 1032 (1974).

Proposed Federal Legislation of the National Indian Gaming Task Force

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Tribal Gaming Act".

SECTION 2. The Congress finds that—(1) A principle goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency and strong tribal governments; and

(2) Indian tribes have become engaged in or have licensed gaming activities in Indian country as a means of generating tribal revenues;

(3) Tribal operation and licensing of gaming activities is a legitimate means of generating revenues for tribal operations, and economic development;

(4) Indian tribes do and can regulate and operate gaming activities free from the influence of organized crime, racketeers, professional gamblers, and those who would defraud or otherwise attempt to exert corrupt influence upon them;

(5) Existing Federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming activities within Indian country.

(6) Federal courts have held that Indian tribes have the exclusive right to regulate gaming activities not prohibited by Federal Law and also conducted within a State having criminal jurisdiction over Indians on Indian reservations which does not prohibit such gaming activities as a matter of the state's criminal law.

SECTION 3. (a) Congress hereby declares that the establishment of Federal standards for gaming activities in Indian country is necessary to protect the right of tribal governments to regulate such activities.

(b) It is a purpose of this act to provide a single, uniform federal mechanism for the protection and advancement of the legal rights of Indian tribes to operate, control and regulate gaming activities within their reservations.

SECTION 4. For the purpose of this Act:

(1) "Secretary" means the Secretary of the Interior.

(2) "Indian Tribe" means any federally recognized Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C.A. §1601 et seq.]

(3) "Indian Country" means (a) all lands within the exterior boundaries of any Indian reservation, and (b) any lands, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(4) "Gaming" means to deal, operate, carry on, conduct, or maintain for play any banking or percentage game or other game of chance played for money, property, credit or any other representative value, when conducted for profit making enterprise or for generation of tribal revenue, but does not include social games played solely for prizes of minimal value or games played in private homes or residences.

SECTION 5. Unless conducted pursuant to a tribal ordinance or resolution adopted by an Indian tribal government, gaming within Indian country shall not be legal. Any violation of Tribal gaming laws or regulations shall be subject to tribal prosecution under any applicable provisions of the tribal criminal code or to Federal prosecution pursuant to the provisions of any specific Federal law prohibiting gambling activity.

SECTION 6. (a) Except where a gaming activity is specifically prohibited within Indian country by Federal law or within a State as a matter of that State's criminal jurisdiction over Indians on the reservation, an Indian tribe may engage in or license and regulate such gaming activity within its jurisdiction of the tribe pursuant to a tribal ordinance or resolution.

(b) A tribe may pass an ordinance or resolution concerning the conduct, licensing or regulation of gaming activity within its jurisdiction. Each tribal ordinance or resolution shall provide at a minimum that: (1) The tribe itself conduct or licence tribal members to conduct, any proposed gaming activity except as provided in subsection (c); (2) Net revenues from tribally owned gaming operations will be used to fund tribal operations, programs, and economic development. (3) Annual audits will be performed by the tribe; (4) Each licensee must provide the tribes with an annual accounting of the proceeds, or at the tribe's request.

(c) A tribal ordinance or resolution may provide for the licensing and regulation of gaming conducted or operated by individual tribal members provided that no individual nor anyone connected with any licensed organizations shall have been convicted of a crime of moral turpitude or gambling offense; and provided further that such offense in the opinion of the tribe is not the result of an Indian rights issue.

(d) A tribe, if required by its constitution shall submit its ordinance or resolution to the Secretary for approval. Any duly submitted tribal gambling ordinance shall be approved if it meets the requirements of Section 6b, by the Secretary within 90 days of its submission. Any ordinance or resolution which has not been acted upon within 90 days after it is submitted shall be deemed to have been approved by the Secretary. However, a tribe not constitutionally required to submit its ordinance or resolution for approval may do so at its option.

SECTION 7. (a) Subject to approval of the Secretary, a tribe may enter into a management contract for the operation and management of a tribal gaming enterprises for a reasonable fee which shall not be based upon any percentage of the gross or net revenue of such operation, *Provided, That*, before approving such contract, the Secretary shall require and obtain the following information.

(i) the name, address and other additional pertinent information of every individual having a financial interest in or management responsibility for such contract;

(ii) a description of any previous experience which the contractor of the persons listed pursuant to the subparagraph (i) has had with other gaming contracts with Indian tribes or gaming licenses issued by the Indian tribe or State, including the name and address of the licensing agency or other parties to any other gaming contract; and

(iii) a complete financial statement of the contractor and those persons listed pursuant to subparagraph (i).

(iv) certified proof of a tribal license defined as in Section 6. (c) of this Act.

(b) Each properly submitted contract shall be considered and notification of approval or disapproval shall be provided to the parties within thirty days (30) of receipt of the proposed contract. Any contract not acted upon within thirty (30) days shall be considered as having been approved.

(c) The Secretary shall not approve and may void any contract where he has knowledge that any person listed pursuant to subparagraph (i) of this section, has been convicted of any felony or gambling offense.

SECTION 8. The Secretary shall have the power, when a tribe has entered a management contract pursuant to Section 7, to (1) inspect and examine all premises wherein gaming is conducted, (2) demand access to and inspect, examine, photocopy and audit all papers, books and records respecting the gross income produced by a gaming business and require verification of income and all other matters respecting the enforcement of this Act.

SECTION 9. The Secretary shall have the duty to preserve any and all information received pursuant to Section 8 as private and confidential and such information shall be exempt from the provisions of the Freedom of Information Act requiring disclosure to the public; disclosure of information obtained pursuant to this section to anyone for any purpose other than the enforcement of federal and tribal laws shall be a felony.

SECTION 10. Any existing gaming operation in Indian country shall have one year from the date of enactment to comply with this act.

SECTION 11. It shall be lawful for any radio or television station and broadcasting or cable network and any publication using the Federal mails to transmit or mail any advertisement or other message from any Indian gaming operation.

Mr. Taylor. Thank you, Ms. McCloud.

Mr. Bowen?

Mr. Bowen. Just very briefly, I think Connie pretty much expressed our concerns, but it seemed to us that an important point in that bill, which I don't think was really considered when it was drafted, is our rather unique situation and the way that we chose to manage our games.

I just want to reiterate that we do license, regulate, and have a comprehensive code, and a significant amount of the revenue goes right directly to the tribe in the form of tax. It is only tribal members and families that run and operate the different halls.

I think it is important in the sense that non-Indian individuals would under the bill be allowed personal profit in a regulated manner, and that is appropriate, but it would prohibit Indian individuals from that same thing. That is the point I think we wanted to make.

I would just like to extend our appreciation, our real sincere appreciation, for the time you folks have put in here today.

Mr. TAYLOR. Well, thank you very much.

Ms. McCloud, I do have one question. You indicated these are not high stake games. What is the maximum pot limit that any of these three halls pay out?

Ms. MCCLOUD. Generally, they may offer $100 a game, and once a night $1,000 may go. There are progressive pots that build up to several thousand dollars. On occasion it has gotten as high as $13,000 and on another occasion $23,000, but those are progressive pots that build up over several months——

Mr. TAYLOR. Based on the failure of someone to have a winning combination?

Ms. MCCLOUD. Yes. But basically it is on an average $100 a game. Most of the bingo halls operate at least once nightly $1,000.

Mr. TAYLOR. Thank you.

Thank you all very much.

I would like to call Leonard Prescott, chairman of the Shakopee Sioux Community, accompanied by James Townsend, attorney for the tribe; and William Foster, commissioner of gaming for the Muskogee Creek Nation.

Mr. Prescott?

STATEMENT OF LEONARD PRESCOTT, CHAIRMAN, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, PRIOR LAKE, MN, ACCOMPANIED BY JAMES TOWNSEND, COUNSEL

Mr. PRESCOTT. Mr. Chairman, members of the committee, my name is Leonard Prescott. I am tribal chairman to the Shakopee Mdewakanton Sioux Community located in Minnesota.

I have submitted written comments for the second part of this hearing, but I would like to emphasize a few points and respond to questions.

The Shakopee Mdewakanton Sioux have operated a bingo game since October 1982. We believe that the Federal legislation is necessary to protect Indian tribes from exploitation by outside management companies.

We are now in litigation with the management company which runs our bingo hall and we also operate a bingo lounge which offers more nontraditional bingo games and other games which are permitted in the State of Minnesota.

As a result of the lawsuit, the tribe has operated the lounge for the past 3 months. During that time, we have increased the revenues by 50 percent. I feel that by doing this the tribe has proven that they don't need an outside management company; they can develop management skills to operate their own bingos.

Mr. TAYLOR. Has there been a change in the net also?

Mr. **Prescott**. Has there been a change in what?

Mr. **Taylor**. In the net income as opposed to gross?

Mr. **Prescott**. Yes, the net income has increased in the last 3 months. Originally it was $50,000 for 1 year and 2 months. The first month we took over we increased it by $20,000. The second month we increased it by—well, we went from $20,000 and we went to $110,000——[1]

Mr. **Taylor**. In 1 month?

Mr. **Prescott**. Not increased it that much, but let's say it was $50,000 and we made the $70,000 in net profits; the month after we made $110,000 net profits, and the month after that we made—which is the month we are in—as of last month, $160,000 in net profits.

Mr. **Taylor**. How does that compare to the profits you were making before you changed?

Mr. **Prescott**. We received no money from the Bingo Lounge games prior to the assumption of control by the tribe.[2] The management left in March because of the disapproval of our lounge contract by our area director.

Last week, Mr. John Fritz, the Deputy Assistant Secretary for Indian Affairs, ruled that the contracts which were negotiated by the management company with our former chairman were invalid. We thank Mr. Fritz for the decision. We think that it will help other tribes as well as ours.

If Federal law similar to that now under consideration had been in force 3 years ago, we might not be in court today.

We have a copy of the *Fritz* decision here today and ask that it be a part of the record.

Mr. **Taylor**. It will be made a part of the record at this point.

Mr. **Prescott**. Thank you.

[The *Fritz* decision referred to and additional background memorandums follow:]

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[1] Mr. Prescott indicated in his corrected transcript that the net income in February was $22,500 and in April increased to $69,000.

[2] Mr. Prescott also indicated in his corrected transcript that, up to the time of the assumption of control by the tribe, there was a year-to-date loss of $192,785 as of February 1985.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

JUN 1[illegible] [illegible]5

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

Donald J. Simon
Sonosky, Chambers and Sachse
1050-31st St., N.W.
Washington, D.C. 20007

George F. McGunnigle, Jr.
Leonard, Street and Deinard
510 Marquette Ave., Suite 1200
Minneapolis, Minn. 55402

Re: Appeal of Shakopee Mdewakanton Sioux Community from Approval of Bingo Management Agreement with Little Six Enterprises; Appeal of Little Six Enterprises from Disapproval of Bingo Lounge Agreement with Shakopee Mdewakanton Sioux Community

Gentlemen:

This constitutes my decision on the two above-captioned appeals, both of which arose from the Minneapolis Area Director's action of March 8, 1985, in which he approved a bingo management agreement dated July 8, 1983, between the Shakopee Mdewakanton Sioux Community and Little Six Enterprises and disapproved a bingo lounge agreement dated October 9, 1984, between the same parties. For the reasons discussed below, I reverse the Area Director's approval of the bingo management agreement and affirm the Area Director's disapproval of the bingo lounge agreement. I will address the bingo lounge agreement first.

Bingo Lounge Agreement

A. Procedural Matters

Little Six filed a notice of appeal of the Area Director's disapproval of this agreement. The notice of appeal was received at the Minneapolis Area Office on March 11, 1985. Little Six did not thereafter file an appeal. The Community filed an answer on April 30, 1985, which was within 30 days of the date Little Six's time to file its appeal expired.

The Community's answer urges that Little Six's appeal be dismissed for lack of prosecution. Little Six, by letter of April 15, 1985, indicated its apparent belief that its appeal was perfected by the filing of a notice of appeal. That letter urged an immediate decision on the grounds that the Community had not responded to Little Six's notice of appeal within 30 days. It appears that Little Six considered that its appeal was contained in its notice of appeal, although that intent is not clear from the face of the notice of appeal. [1] Since I have no reason to doubt that Little Six acted in good faith, I decline to dismiss its appeal summarily under 25 CFR § 2.17. I will accept the Community's answer as timely filed because the Community could not have known that Little Six did not intend to file an appeal subsequent to its notice of appeal.

B. Merits

The Area Director stated that he disapproved the bingo lounge agreement because of the controversy surrounding the tribal chairman's authority to execute the contract. The Area Director also stated that the Community could resubmit the contract if it, by resolution, authorized execution of the contract on its behalf.

The then chairman of the Community submitted the bingo lounge agreement for approval on October 19, 1984, accompanied by Community Resolution No. 0-11-6-82, Gaming Activities, of November 6, 1982 and partial minutes of the General Council [2] meeting of the same date. The resolution stated that the Community had established a bingo enterprise and "that it may be possible for the . . . Community to engage in additional types of gaming activities." It then authorized the tribal chairman "to act on behalf of the community to conduct the necessary business to implement any such gaming activities that may be feasible for the community." The minutes indicate that the chairman was authorized only "to investigate the possibility of starting blackjack and/or other gaming activities on the reservation." Thus, while the language of the resolution, although general, might be construed to authorize the chairman to sign the bingo lounge [3] agreement on behalf of the Community, the minutes cast doubt that such a construction was intended by the General Council.

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[1] By letter of May 3, Little Six stated that it considered its notice of appeal and its appeal to be set forth in one document.

[2] The General Council, consisting of all Community members qualified to vote in Community elections, is the governing body of the tribe. A three-person Business Council exercises authority delegated to it by the General Council.

[3] It is my understanding that the games intended for the bingo lounge were bingo-related games but not traditional bingo. Thus, they were presumably within the scope of the "additional types of gaming enterprises" contemplated by the resolution.

The minutes of the General Council meeting of September 12, 1984, which are unsigned, state that the Business Council was authorized to negotiate a contract for the bingo lounge and bring it before the General Council for approval. On October 9, 1984, the chairman executed the contract. On October 20, 1984, the day following the chairman's submission of the contract to the Area Office, the General Council voted to disapprove the November 6, 1982, resolution; to decline to recognize the chairman's authority to sign the contract, and to appoint a committee to renegotiate the contract. Six days later, on October 26, the General Council voted to ratify the contract, at a meeting where it was announced that the management company was unwilling to renegotiate the contract. The next written communication on this matter from the Community to the Area Office came on February 11, 1985, when the new tribal chairman wrote, requesting that both contracts be disapproved.

From the sequence of events described, it appears that, when he executed the contract on October 9 and when he submitted it for approval on October 19, the then chairman probably did not have the authority to execute the contract on behalf of the community. It also appears that the General Council vote of October 26 cured that defect by ratifying the contract. Even though the question of the chairman's authority to execute the contract may have been resolved by the October 26 General Council vote, however, the contract did not comply with the Instructions for Review of Tribal Bingo Management Contracts issued on July 20, 1984. The Area Director should have simply returned the contract to the Community because of the absence of the resolution specified in Paragraph 2 of the Instructions. His disapproval of the contract, however, accomplished essentially the same result.

Paragraph 2 of the Instructions provides:

> No contract should be reviewed unless submitted for review by a resolution of the governing body of the tribe. The resolution must set forth the authority of the tribal officials who have signed the contract on behalf of the tribe and identify the provision of the tribal constitution which authorizes it. The resolution should be attached to and made a part of the contract.

The first sentence of this provision is jurisdictional and is intended to insure that Area Directors undertake to review management contracts only when it is clear that the tribal governing body wants the contract reviewed. In this instance, the tribal chairman submitted the contract by letter but there is no indication that either the General Council or the Business Council authorized the submission. [4] Needless to say, the resolution called for by this paragraph is also intended to verify the authority of the executing officials, and its presence here would have clarified the uncertainty over the chairman's authority.

In other respects also, the contract does not conform to the Instructions. Paragraph 4 of the Instructions provides:

> The contract must have a fixed limited time to run, which must be distinctly stated. The contract term should not exceed five years unless there is provision for renegotiation of the management fee or other adjustment of the fee to accommodate changes in circumstances. For contracts of longer than five years duration, the opportunity for renegotiation or other provision for adjustment should arise no later than five years after the contract is entered and thereafter at intervals of no longer than five years.

The bingo lounge agreement is for a period of 12 1/2 years with no provision for renegotiation of the management fee. The management fee is set at 45% of the net operating profits.

The five-year limit in Paragraph 4 of the Instructions is intended to insure that tribes do not bind themselves to long-term contracts at high management fees. Although a high fee might be justified at the outset of a contract to offset risks taken by the management company, such justification would not normally be expected to continue throughout a contract period of several years duration. The renegotiation requirement is intended to insure that the parties to long-term contracts will reassess the fairness of the management fee at periodic intervals. I consider the provisions of Paragraph 4 to be among the most important in the Instructions because of the serious potential for unfairness to tribes in long-term inflexible management contracts.

Paragraph 18 of the Instructions provides:

> The contract should provide that the contractor will not interfere with or attempt to influence internal affairs or governmental decisions of the tribe.

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[4] In a letter of February 21, 1985, the new tribal chairman stated that neither the General Council nor the Business Council was informed that the chairman had submitted the contract for approval.

The bingo lounge agreement does not contain such a provision. Recent occurrences involving the two Shakopee agreements demonstrate the need for such a provision in bingo management contracts. On a number of occasions, Little Six has undertaken to address Community members directly in apparent attempts to influence them in making tribal governmental decisions. Exhibit VI to the Appendix to the Community's Appeal contains six such documents, either addressed directly to Community members or indicating that all Community members were copied. Some of these attack the Community leaders directly [5] and all appear to be attempting to influence Community members against the position of the Community leadership. The requirement of Paragraph 18 was intended to protect tribes against this kind of interference. In view of the damage that could be inflicted on tribal governments by the interference of contractors in internal tribal affairs, I consider Paragraph 18 to be a critical provision of the Instructions.

Because the bingo lounge contract failed to comport with the Instructions in at least three important respects, it clearly should not have been approved. Accordingly, I affirm the Area Director's disapproval.

Bingo Management Contract

A. Jurisdictional Issues

Little Six argues that an approval of a contract may not be appealed because approval is an act which makes the contract fully binding. I would agree that Secretarial approval of a contract, once it is final for the Department, is not subject to administrative reversal. However, the Secretary, who is vested with the authority to approve tribal contracts by 25 U.S.C. § 81, has chosen to make decisions of his subordinates subject to administrative appeal. Accordingly, the Secretary's approval is not final until the administrative appeal process has run its course. See 25 CFR § 2.3(b).

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[5] For instance, a letter dated March 21, 1985, and addressed to "All Community Members," begins:

> Leonard's [Leonard Prescott, Community Chairman] letter of March 15 (probably written by Ed McGaa--it sounds like him) is clearly the latest of his many efforts to misguide and misinform the Community and, as can be expected, contains many lies. The lies do not bother me. By now I am used to Leonard's lies, and I am sure that as time goes on more and more Community members will see through his lies.

The letter proceeds to, inter alia, counsel abandonment of the lawsuit filed by the Community against the management company.

Little Six also argues that the Community is not an "aggrieved" person who may appeal under the Department's regulations and that it is estopped to object to the Area Director's approval. 25 CFR § 2.3 provides a right of appeal to "any interested party adversely affected by a decision of an official. . . " Clearly, the Community consider itself adversely affected by the Area Director's decision. I have no basis for denying it the right to appeal that decision under the appeal regulations in 25 CFR Part 2.

B. Merits

The bingo management agreement suffers the same deficiencies with respect to the Instructions for Review of Tribal Bingo Management Contracts as the bingo lounge contract. It was not submitted by a tribal resolution as required by Paragraph 2. [6] The authority of the chairman to execute the contract is subject to uncertainties similar to those present with respect to the bingo lounge agreement. Moreover, unlike the bingo lounge agreement, the bingo management agreement was never ratified by the General Council. For the same reasons discussed above with respect to the bingo lounge contract, I conclude that the Area Director should not have accepted the bingo management contract for review.

The bingo management contract also fails to comport with Paragraphs 4 and 18 of the Instructions. The contract is for a period of 15 years with no provision for renegotiation of the 45% management fee. The contract does not require the management company to abstain from interfering in tribal governmental affairs. Accordingly, the contract should not have been approved.

Little Six argues that the Instructions are not applicable to approval of the bingo management agreement because the agreement was executed prior to promulgation of the Instructions. The Instructions, of course, govern approvals of contracts, not execution of contracts. It was my intention, as is evident from the Instructions themselves, that the Instructions would govern all approval actions taken subsequent to July 20, 1984. [7] The Shakopee bingo management agreement was submitted for approval on October 19, 1984, three months after promulgation of the Instructions and therefore the Area Director's action was subject to the Instructions.

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[6] No resolution or other document accompanied the chairman's submission of this contract. Presumably the chairman did not consider Resolution No. 0-11-6-82 to have authorized his execution of this contract. In light of the resolution's apparent application to gaming activities "additional" to bingo, and the fact that this contract relates to bingo, I would not construe it to have authorized this contract unless some evidence were present to support such a construction. No such evidence is present in the record. Nor is any other document purporting to authorize the chairman to execute the contract present in the record.

It should be remembered that the Instructions do not require the parties to a bingo management contract to have the contract approved. The parties retain the option of continuing to operate under unapproved contracts. A contractor benefits from approval, of course, by acquiring protection from qui tam actions under 25 U.S.C. § 81 and criminal prosecutions under 18 U.S.C. § 438.

The fact that the contract was entered prior to promulgation of the Instructions cannot control the Secretary's authority to apply approval standards which he believes are necessary for the protection of tribes. The Instructions represent guidance to the Area Directors concerning contract provisions which the experience we have gained over the past few years has taught are necessary to insure that a management contract is in the tribe's best interest. The role of the Department in reviewing tribal contracts under 25 U.S.C. § 81 is, of course, to look after the interest of the tribes.

Failure of the Shakopee bingo management contract to comply with Instructions in the respects discussed above is a fairly clear indication that the contract is not in the Community's best interest. Beyond that, the Community argues vigorously that the contract is not in its best interest. It argues that the 15-year term, the 45% management fee, and the control vested in the management company are unfair to the Community. It also alleges that certain acts of Little Six have been detrimental to the Community's interest. Little Six refutes some of these factual allegations, and it is beyond the scope of this decision to determine them. [8] However, in at least two respects, the Community's allegations are borne out by the record here. The

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[7] The Instructions contemplate that pre-existing contracts might not comply and therefore might require renegotiation in order to bring them to a point where they could be approved. See Paragraph 22. While it appears unlikely, under present circumstances, that the Community and Little Six could agree to modify the contract, the opportunity remains available. Little Six has apparently declined to renegotiate the bingo lounge contract, however, (See Minutes of General Council Meeting, October 26, 1984) which was executed after the Instructions were promulgated and which also fails to comply with the Instructions.

[8] Presumably, they will be addressed, in part at least, by the district court in United States ex rel. Shakopee Mdewakanton Sioux Community v. Pan American Management Co., Civil No. 4-85-231 (D. Minn.). The court has appointed a special master to address some of these matters.

Community alleges that Little Six has interfered in tribal governmental affairs. Exhibit VI to the Appendix to the Community's Appeal. The six documents discussed above demonstrate that Little Six has indeed attempted such interference. The Community also alleges that Little Six has exerted improper financial pressures on the Community through its control over the bingo proceeds. Exhibit VIII to the Appendix to the Community's Appeal. To the extent that the court in Shakopee has reviewed the withholding by Little Six of the Community's share of the February and March profits and has ordered the distribution of the March profits, the merit of the Community's allegation has been tacitly recognized by the court. [9]

These are all matters which I must consider in determining whether this contract is in the best interest of the tribe. The Community's position is, of course, entitled to great weight in my decision, in light of the well-established federal policy recognizing a government-to-government relation with the tribes and favoring tribal self-determination.

Considering all the factors discussed above, I conclude that the bingo management agreement is not in the best interest of the tribe. Accordingly, I reverse the Area Director's approval of that agreement.

The Area Director is instructed to return both agreements to the Community with advice that the agreements may be resubmitted for approval if they are modified to bring them into compliance with the Instructions and if they are submitted by a tribal resolution as provided in Paragraph 2 of the Instructions.

This decision is based on the exercise of discretionary authority and is final for the Department.

Sincerely,

Deputy Assistant Secretary--
Indian Affairs

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[9] The court noted in its order of April 17 at p. 10, n. 8:

> The unilateral unchecked action of Little Six in withholding distributions also puts the very ability of the Community to continue this litigation at risk. . . The Community's dependence on the monthly distribution creates the very real possibility that the pending litigation could be resolved based on the Community's need for food, shelter and clothing, rather than on the merits.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Tribal Government Services (JS)

JUL 20 1984

Memorandum

To: All Area Directors

From: Deputy Assistant Secretary - Indian Affairs
(Operations)

Subject: Review of Tribal Bingo Management Contracts

Two federal courts have recently held that 25 U.S.C. §81 renders tribal bingo management contracts invalid unless they are approved pursuant to that section.[1] While it is my view and the view of the Solicitor's Office that these decisions are erroneous, it is likely that tribes now operating under unapproved management contracts will, understandably, become concerned about the effect of those decisions and begin to request approval of their contracts.

As you know, there are no regulations governing review of such contracts. Given our uncertain authority under present law to promulgate regulations of this nature, and the time it would take to do so, I do not intend to issue regulations at this time. Nevertheless, I believe that we must offer some assistance to tribes which are concerned about the legal status of their management contracts. Therefore, in cases where tribes request approval of their management contracts, we should undertake to review them. Our role, pending clarification of the law,[2] should be one of assisting concerned tribes to overcome the legal uncertainties caused by the federal court decisions.

Until further notice, the following instructions should be observed in reviewing tribal bingo management contracts. If you have recommendations for revisions in these instructions, please send them to the Deputy Director, Office of Indian Services. Amended instructions will be issued as necessary.

1. Authority to approve or disapprove tribal contracts may not be delegated to the Superintendents. 10 BIAM 3.5A. Accordingly, tribal bingo management contracts may be acted on only at the Area level or above. However, the Superintendents should participate in the review process and offer their recommendations to the Area Directors.

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[1] *Wisconsin Winnebego Business Committee v. Koberstein*, No. 83-C-1014-S, W. D. Wis., April 2, 1984; *Flandreau Indian Management Company v. Flandreau Santee Sioux Tribe*, Civ. No. 84-4055, D. S. Dak., April 11, 1984.

[2] We intend to seek legislative clarification of 25 U.S.C §81. This, however, will take some time to accomplish. H. R. 4566, the "Indian Gambling Control Act," if enacted in its present form, would clearly authorize and require the Department to review management contracts. However, that bill is not expected to be acted on in this Congress.

2. No contract should be reviewed unless submitted for review by a resolution of the governing body of the tribe. The resolution must set forth the authority of the tribal officials who have signed the contract on behalf of the tribe and identify the provision of the tribal constitution which authorizes it. The resolution should be attached to and made a part of the contract.

3. The contract must set forth (1) the time and place where it was made, (2) the purpose for which it was made, and (3) the thing or things to be done under it.

4. The contract must have a fixed limited time to run, which must be distinctly stated. The contract term should not exceed five years unless there is provision for renegotiation of the management fee or other adjustment of the fee to accommodate changes in circumstances. For contracts of longer than five years duration, the opportunity for renegotiation or other provision for adjustment should arise no later than five years after the contract is entered and thereafter at intervals of no longer than five years.

5. The contract must include the amount or rate per centum of the contractor's fee. It should also specify the method of computing the fee and set out the accounting procedures to be used.

6. The contract must specifically set forth any contingent matter or condition which constitutes a part of the contract. The contract should state that it represents the entire agreement of the parties.

7. The contract must include or have attached a list of all parties in interest to the contract including, on behalf of the contractor, all investors, including general and limited partners, all corporate officers and directors, and all employees who will have day-to-day management responsibility for the gambling operation. The list must include the residence addresses, occupations and social security numbers of all such persons. If the contractor is a corporation, its articles of incorporation and the corporate resolution authorizing the contract should also be attached.

8. The contract should specifically state whether assignments or subcontracts[3] will be permitted. If they are permitted, the contract should provide that no assignment or subcontract is valid until approved by the Secretary (i.e., Area Director). Assignments or subcontracts submitted for approval should include or have attached a list of all parties in interest as defined in paragraph 7 above, including residence addresses, occupations and social security numbers.

9. Before any contract is approved, the names of persons submitted pursuant to paragraphs 7 and 8 should be transmitted to the FBI for name and record checks. All such names and results of the FBI checks should be sent to the Chief, Division of Law Enforcement Services, who will maintain a control file of this information. No contract, assignment, or subcontract should be approved where the FBI report shows a felony conviction or plea of nolo contendere for any such person. If the FBI report shows an indictment for any such person, the tribe should be so advised.

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[3] "Subcontract" is defined as any contractual arrangement between the contractor and a third party wherein the third party will have any responsibility for the gambling operation or access to the proceeds of the operation.

10. The contract should require the contractor to furnish the tribe, on at least a monthly basis, statements showing revenues and expenses of the gambling operation.

11. The contract should provide that the tribe will receive its portion of the proceeds of the gambling operation on at least a monthly basis. The contract should specify the tribal official or bank account to whom the tribe's portion of the proceeds should be paid and such provision should be consistent with the tribe's constitution and bylaws.

12. The contract should provide that the tribe has the right to inspect the contractor's books relating to the gambling operation at reasonable times, such as during normal business hours, and should explicitly recognize the right of the tribe at any time to secure an independent audit of the contractor's accounts relating to the gambling operation.

13. The contract should have a provision for dispute resolution short of litigation, preferably through a private procedure, such as arbitration.

14. The contract should clearly set out the grounds and procedures for termination of the contract. Breach of contract should be a ground for termination.

15. The tribe should have a valid ordinance authorizing and regulating the gambling activity to be conducted pursuant to the contract, and the contract should state that the gambling operation will be conducted in accordance with the tribal ordinance.

16. The contract should identify the party responsible for employment and personnel matters. A provision for Indian preference is desirable.

17. The contract should be consistent with any related lease of trust land.

18. The contract should provide that the contractor will not interfere with or attempt to influence internal affairs or governmental decisions of the tribe.

19. If existing provisions for law enforcement and fire protection are not adequate for the proposed enterprise, the contract should specify how these services will be provided.

20. The contract should be reviewed for legal sufficiency by the Regional or Field Solicitor's Office.

21. If your opinion, after review of a contract, is that the contract may not be in the best economic interest of the tribe, you should advise the tribe of your opinion and the reasons for it. However, if the tribe still wishes to proceed with the contract, and it appears that the tribe has entered into it at arms length and after careful consideration, the tribe's business judgment should be respected, and the contract should not be disapproved solely on the grounds that the tribe may have been able to make a better bargain. On the other hand, where it appears from the contract itself or from surrounding circumstances that the tribe has made a particularly unwise business decision or has been subjected to outside pressure, the contract should not be approved. To assist you in this assessment, you may wish to ask the tribe to submit a narrative describing how the contractor was selected and how the contract negotiations were conducted.

22. If contract modifications sufficient to bring the contract into conformity with these instructions cannot be accomplished, the contract should be disapproved.

23. Generally, the Superintendent should, within seven (7) working days of a tribal request to review a gambling management contract, transmit the documents submitted for review and approval to the Area Director. The Area Director should, within three (3) working days, send an acknowledgment of receipt of the documents to the tribe and the contractor. A final decision concerning the contract should be made as soon as possible, and not later than thirty (30) working days after the contract documents, the FBI reports, and the Solicitor's advice are received and after it is clear that no further modifications of the contract will be made.

24. Appeals from an Area Director's decision may be made pursuant to 25 CFR Part 2.

APR 5 1985

Tribal Government Services (JS)

Memorandum

To: All Area Directors

From: Deputy Assistant Secretary - Indian Affairs

Subject: Review of Bingo Management Contracts — Supplement to Memorandum of July 20, 1984

Please make the following additions to the instructions for review of bingo management contracts contained in my memorandum of July 20, 1984.

Revise paragraphs 7 and 8 to read:

7. The contract must include or have attached a list of all parties in interest to the contract including, on behalf of the contractor, all investors, including general and limited partners, all corporate officers and directors, and all employees who will have day-to-day management responsibility for the gambling operation. The list must include the residence addresses, occupations, dates of birth and social security numbers of all such persons. If the contractor is a corporation, its articles of incorporation and the corporate resolution authorizing the contract should also be attached. Additional information, such as resumes of individuals or information on lenders, may be requested if you believe it will assist you in evaluating the contract.

8. The contract should specifically state whether assignments or subcontracts will be permitted. If they are permitted, the contract should provide that no assignment or subcontract is valid until approved by the Secretary (i.e., Area Director). Assignments or subcontracts submitted for approval should include or have attached a list of all parties in interest as defined in paragraph 7 above, including residence addresses, occupations, dates of birth and social security numbers.

Revise paragraph 17 to read:

17. The contract should be consistent with any related lease of trust land. If no related lease is submitted, the management contract should be examined to determine whether the relationship between the parties, as described in the contract, will require a lease. If it will, the tribe should be so advised.

Add a new paragraph 25:

25. Compliance with the National Environmental Policy Act is required before a bingo management contract (or related lease) is approved.

A question has arisen as to the procedures for obtaining FBI name and record checks under paragraph 9. It is intended that the Area Offices will request the checks through the FBI offices in their areas rather than request the Central Office to obtain them. If there are questions about this, please contact the Chief, Division of Law Enforcement Services.

/S/ John W. Fritz

Mr. PRESCOTT. Our goal is to be self-sufficient. This decision and legislation can do much to promote economic independence for Indian tribes.

Our tribe is small, only 60 voting members, 200 people in total. We need not only the revenue, but the control of the business including gaming if we are to prosper.

Up to now management has used control of the business and the money to favor only some individuals in the Shakopee Sioux Community. This has divided the tribe, and the management has tried to manipulate our elected officers and our members. This intrusion into our affairs is just another in a long history of disruption of Indian tribes by outsiders. We want financial advantage. We support legislation which will prevent such exploitation, but we also believe that the sovereignty should not be sacrificed.

Again, I thank you for the opportunity to appear. If you have any questions, I will try to answer them for you.

[The following additional material was included for inclusion in the record: A prepared statement; letters in regard to his testimony from Alfred Estrada, manager, Little Six Enterprises, and from James E. Townsend, law firm of Larry Leventhal & Associates; and a disposition for the U.S. District Court, District of Minnesota, regarding the Shakopee Mdewakanton Sioux Community. Balance sheets of the Little Six Bingo Lounge were retained in the committee's files. Testimony resumes on p. 656.]

PREPARED STATEMENT OF LEONARD PRESCOTT, CHAIRMAN, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

Mr. Chairman, Members of the Committee, thank you for the opportunity to address you today on this important legislation. My name is Leonard Prescott, I am Chairman of the Shakopee Mdewakanton Sioux Community. With me here today is our tribal attorney, Mr. Jim Townsend, and Ms. Ella Mae Horse, Governmental Relations Consultant for the Shakopee Mdewakanton Sioux Community.

Mr. Chairman, the Shakopee Mdewakanton Sioux Community is pleased to find the Senate Select Committee is focusing attention on legislation which is intended to protect Indian gaming activities. As Federal aid to Indian tribes decreases, these activities which have previously been important, for many communities now, have become vital economic resources.

The Shakopee Mdewakanton Sioux Community is a small band located south of the Minneapolis St. Paul metropolitan area. The land on which we now live and on which our gaming facility is located is trust land. This land was provided to us by the United States in gratitude for assistance that our forefathers provided to white settlers during an extremely violent period of hostilities in 1862. Our tribe presently includes approximately sixty adult voting members who are direct descendants of those Sioux Indians who assisted the settlers back in 1862.

From the time the trust land was first made available to us until 1982, our economic resources were quite meager. At that time, over 60% of our population was unemployed. Many of our tribal members were recipients of welfare assistance. Membership in the Community was declining because there were virtually no economic incentives on the Reservation. Many people found it necessary to relocate in order to find employment. In 1982, at the time the Tribe entered into negotiations with a management company who proposed to assist our Community with the development of a gaming operation, we had extremely strong incentives to accept the terms proposed to us without serious question. We believe it is just such a situation which demands the protection which this legislation and companion bills in the House of Representatives seek to provide.

The incentive of jobs and payments to the Community for individual members and for the development of tribal programs may cloud the judgment of Community leaders and Community members as they negotiate with outsiders and lead to the adoption of long term agreements which are unfair and burdensome. In 1982, the then Chairman of our Tribe entered into negotiations with a management company which led to a fifteen year contract for the operation, management and maintenance of a gaming facility. In compensation, the management company was to receive 45% of the net revenue. The Community obtained a construction loan from a local bank to erect the building in which the facility is now housed. Collateral for that loan was provided by the management company in the form of a certificate of deposit. The management firm, however, invested no money directly in the venture.

During the period of time while our previous tribal chairman was negotiating with the management company on behalf of the Community, he also negotiated a private agreement with the same company which called for payments to himself and his wife of some $205,000, of which $80,000 was actually paid. Our Chairman, a man with only limited education, believed that this agreement was proper and that he had been authorized to obtain compensation for a business which he had operated on the land which was required for the Bingo Hall. We believe that the management company took unfair advantage of both the Community and our former Chairman because the private contract with the Chairman was not fully disclosed, and because the terms of the agreement for operation of the Hall were far more favorable to the management company than an arms length transaction would justify. This problem was further aggravated by the payment of monies due our Chairman under these private agreements from the proceeds of the business. We have also recently learned that private "incentive" payments from the management company are being made to certain managers of the facility, thus insuring loyalty to the management company, rather than responsibility and loyalty to the Tribe.

We are presently engaged in litigation against the management company, and regretfully against our former chairman. These problems became compounded when we found that the management company was providing funds for legal services to defend our former chairman. We call these matters to your attention in order to suggest a disclosure requirement be included in this legislation. Neither this bill, nor its companions in the House require disclosure of payments from or on behalf of management companies or prospective management companies to tribal officials or tribal members, or gaming employees or their families, or to companies which offer services to gaming ventures. These disclosure reports, we believe, should be made to both the tribe and to appropriate officials in the Bureau of Indian Affairs. Such a requirement would not only check potential corruption of tribal officials and members, but would prevent the appearance of impropriety which might otherwise be found in transactions made for legitimate purposes. In our situation, a Tribal Resolution authorized our former chairman to negotiate with the management company for compensation for his business. The difficulty arose because the Community was not advised that the transaction had been consummated, and only learned in 1985 that the monies paid pursuant to the agreement were drawn, not from the management company, but from the general operating revenues of the business.

Please understand that the bingo gaming operation has been a substantial economic benefit to the Tribe and the surrounding community. Our bingo facility has helped the Tribe to develop a restaurant and other retail sales on the reservation. A number of our tribal members are employed at the Bingo Hall. In addition, the revenues from the facility are used to fund tribal government, a day care center, health service and other services which are valuable to the Community.

The State of Minnesota recently authorized the construction of a major thoroughbred horse racing facility some two miles from our location. This in turn offers us the opportunity to engage in other economic development projects utilizing the capital derived from the gaming operation.

It is also important to note that the economic advantage of our gaming facility benefits the surrounding community as well. The construction of the Bingo Hall and an adjacent cultural center has put over 2 million dollars into the local construction industry. We average six to seven hundred persons per night attending gaming at the Bingo Hall and this increased traffic has lead to the construction of additional roadways in the vicinity of our reservation. All of these people, of course, spend money, not only on the reservation, but in transit to and from at gasoline stations and the like. Our concession sales alone total approximately $80,000 to $90,000 per month and these accounts, of course, increase the revenue flow among local vendors and suppliers. Thus, we believe that the economic advantages afforded by gaming flow not only to ourselves, but to our surrounding community. This is clearly a preferred alternative to subsidies and welfare. We are please to find that the Congress has seen fit to address those questions which are proper in order to protect such valuable activity on Indian reservations. We believe that with appropriate legislation, gaming activity can indeed promote strong tribal government, tribal self-sufficiency and economic development. We believe that regulation of these activities is an exclusive right of Indian tribes however.

We find an advantage in your bill at section 5, wherein you provide for tribal prosecution of violation of gaming laws under applicable provisions of tribal code or Federal law. We believe this is a sensible and appropriate provision which encourages further development of Indian sovereignty and insures appropriate Indian control over the gaming operations for those tribes with a court system.

We do question the suggestion, however, that all tribal ordinances and resolutions providing for gaming be subject to review by the Secretary of the Interior. We believe the provisions at section 5 and section 6 should be modified to include only those situations where persons who are not tribal members manage the operation or, as a result of investment or agreement, receive a portion of the proceeds of the operation. Insofar as gaming operations are operated exclusively by and for the benefit of tribal members, we believe Federal review of the ordinances is superfluous and an infringement upon Indian sovereignty.

Section 6 is valuable as a clarification of the authority of Indian tribes to carry on gaming activity where those games are not banned as a matter of criminal law within a given state. We believe the provisions of Section 7 of the act are far too generous in providing a percentage of the net proceeds to persons or outside managing firms. The incentive here goes far beyond that which is necessary to encourage participation in these ventures. Tribes would be much better served if participation in the venture were controlled in the manner outlined in H.R. 1920. We respectively suggest that the concept of a Regional Indian Gaming Commission as proposed by this bill is unnecessary and creates an additional duplicative bureaucracy which unnecessarily intrudes on matters which are properly the jurisdiction of the tribes and in certain instances, the Bureau of Indian Affairs. We believe that the Bureau of Indian Affairs should become involved, as we previously indicated, in those instances where Indian tribes engage in ventures with persons who are not tribal members, in all other circumstances the tribes should be free to regulate these ventures as they see fit. The creation of the Commission would siphon badly needed revenues from the community to accomplish a purpose which can be more easily and simply obtained by existing means.

The disclosure provisions of section 8 are desirable, we believe, but adjustments should be made in the applicability and scope of such provision. We suggest first that any disclosure required reach, not only the books and records of the venture itself, but the books and records of any parent body of a management company, or of individuals who might be retained to manage such venture. This would have a salutary effect in disuade the participation of those who seek to utilize these businesses for improper purposes, and it would assure a greater degree of responsibility and accountability on the part of outside managers. We also believe that this disclosure requirement should only apply in those instances where persons who are not members of the tribe are managing the venture.

Once again we observe that the restrictions and disclosure requirements are which are properly included in the bill, need not be so broad as to reach gaming activities which are solely owned and operated by Indian tribes for their own benefit. We would like to have the jurisdiction of tribal courts preserved as this bill provides and its companion measure in the House does not. We whole heartedly endorse the concept of Federal legislation which clearly settles the authority of Indian communities to engage in gaming activities free from the intrusive regulatory of the several states.

For these reasons, then, the Shakopee Mdewakanton Sioux Community respectively must decline to support S. 902 in its present form. We would hope that this bill might be amended to conform in substantial part with H.R. 1920.

July 18, 1985

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
Hart Senate Office Building
Room 838
Washington, D.C. 20510

RE: Testimony of Leonard Prescott, Chairman of the Shakopee Mdewakanton Sioux Community on S.902 at hearing held on June 26, 1985

Dear Senator Anderson:

A review of the unedited testimony of Leonard Prescott appearing at pp.244-251 has indicated several factual distortions and discrepancies to which we, as the management company referred to, feel the need to respond.

On page 245, lines 5 through 15, Mr. Prescott states that since certain members of the Shakopee Mdewakanton Sioux Community took over and began managing the Bingo lounge the monthly net profits have steadily increased to $70,000 in April, $110,000 in May and $160,000 in the month of June, 1985. These statements are a gross misrepresentation of the facts and, as such, are indicative of the type of disinformation which has been presented by Mr. Prescott and his attorneys to your committee. In fact, financial statements submitted by the Community's accountant on July 12, 1985, show the monthly net profits to be as follows:

April, 1985 - $69,001*
May, 1985 - $46,952
June, 1985 - $54,407

On June 17, 1985, pursuant to the requirements of our contract with the Community, we presented to Mr. Prescott a conservative profit plan for the present calendar year which reflect profits in the range shown by the financial statements of the Community.

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*It should be noted that April profits were actually lower than reported because during the first full month of operation under Community control, payables were being built up. As the accounting is done on a cash basis, an increase in payables resulted in a misleading net profit figure.

On page 245, lines 18 and 19, Mr. Prescott states the Community received no money from the lounge while we were the managers. In point of fact, we only managed the lounge for five months and during that time the management company is the one that received no money or derived any benefit from the operation of the lounge because all profits were used to pay community debt incurred during construction of the Cultural Center and the lounge itself.

On page 247, lines 7 through 9, Mr. Prescott implies that the management company made questionable payments to certain members of the Community. A recent arbitration proceeding involving this matter has been decided with a finding of no improprieties in or with any such payments, and that the previous Chairman was entitled to receive the $80,000 he received as reasonable compensation for providing the land (and giving up the business he conducted on that land) to make possible the bingo project.

It is important for the committee to note that Mr. Prescott not only fails to mention that recent audits and arbitration and legal proceedings have not shown any impropriety on the part of the management company, but he does not even acknowledge that without the financial backing and know-how of the management company his Community would have been unable to implement such a project and the Community would have been deprived of the many benefits it has derived from what is probably the most profitable enterprise ever undertaken by an Indian Community in Minnesota. It should also be pointed out that there has been a recent change in leadership within the Community through the removal of its Chairman. The Community is currently in turmoil and the management company has unwillingly and through no fault of its own found itself caught in the middle of that turmoil.

We are in favor of federal legislation regulating bingo on federal trust property as we believe that only through proper regulation can Indian bingo survive over a long period of time and thereby provide a stable, long lasting source of income to Indian communities and management companies engaged in that business. We would welcome the opportunity to appear before you to present our views on the proposed legislation. In the interim, we felt it incumbent upon us to correct these factual misrepresentations.

Sincerely,

LITTLE SIX ENTERPRISES

By
Alfred Estrada, Manager

cc: Peter Taylor, Staff Director

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1985 AUG 15 AM 10 55

August 8, 1985

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
Hart Senate Office Building
Room 838
Washington, DC 20510

RE Testimony of Leonard Prescott, Chairman of
the Shakopee Mdewakanton Sioux Community on
S.902

Dear Senator Anderson:

We are in receipt of a copy of a July 18, 1985 letter to you from Alfred Estrada, the managing partner of Little Six Enterprises and a principal of Pan American Entertainment Company. On review of an unedited transcript of Mr. Prescott's comments on June 26, 1985 before your committee. Mr. Estrada has made certain observations and assertions which we cannot ignore. We also enclose our revisions of that testimony.

Mr. Estrada suggests that Mr. Prescott "fails to mention at recent audits and arbitration and legal proceedings have not shown any impropriety on the part of the management company..." (July 18 letter at page 2). We are enclosing a copy of the Findings, Conclusions and Recommendations of the arbitrators in a proceeding between the Shakopee Mdewakanton Sioux Community and the former chairman Norman M. Crooks. This opinion was released on July 2, a week after Mr. Prescott testified before your committee. We further direct your direction to paragraphs 23 and 24 of the Findings at page 14 and paragraph 4 of the Conclusions at page 17. The arbitrators find that the former chairman was inappropriately paid $80,000 by the management company from the operating accounts of the Bingo Palace and that the Community "is entitled to and should recover from New England/Pan American Entertainment Company or any other person succeeding to the obligation the sum of $44,000." We have pled these matters in the federal case against the management company and expect to recover these monies. Mr. Estrada tells you that the "Community is currently in turmoil and the management company has unwilling and through no fault of its own found itself caught in the middle of that turmoil." In fact, the management company has instigated and perpetuated the internal division in the Community and the Deputy Assistant Secretary for Indian Affairs, Mr. John Fritz has so found. (See letter of June 17, 1985 at page 5 and page 8). It is entirely understandable that a firm with such a substantial financial interest in a tribal business should aggressively act to protect that interest. Controls are obviously necessary in order to insure that such actions are proper and not adverse to the Tribe. This of course is precisely the reason that legislation is appropriate to insure oversight and control of management companies operating gaining ventures on Indian reservations.

Mr. Estrada's assertion that audits and legal proceedings have not shown any impropriety on the part of the management company is premature. The audits conducted for the Special Master in our litigation with the management company have not yet been released; when the report is issued, we will, if you wish, immediately forward a copy to you. Recent inquiries of Mr. Robert P. Holthe of Arthur Anderson & Company, who had primary responsibility for the audit, has informed me that the management company has used three "inconsistent" methods to compute the management fee. Mr. Holthe also advises that there are discrepancies between the accounting practices followed by the management company and those required by the contract and by generally accepted accounting principles. If you or your staff wish to contact Mr. Holthe for further information at the Minneapolis office of Arthur Anderson & Company, I am sure he will verify the representations I make here. Indeed, Donald M. Fahrenkamp, the Certified Public Accountant retained by the management company, has submitted the enclosed unaudited financial statement which at note 2 describes a substantial deviation from generally accepted accounting principles, that note concludes "if generally accepted accounting principles had been followed, the property and equipment account would have been increased by $1,290,972.00, and additional prior period earnings available for distribution would be $1,142,366.00. Current period year-to-date earnings would have been increased by $148,606.00. Similar treatment was applied to the Bingo Lounge, where in the February financial statement, the last full month during which the management company operated the facility, Mr. Fahrenkamp notes that "if generally accepted accounting principles had been followed, the property equipment account and current period earnings would have been increased by $507,712.00." We submit copies of these statements for your reference, but not for inclusion in the record testimony of Mr. Prescott.

Mr. Estrada tells you that the management company only operated the Lounge facility for five months. That statement describes only the period of independent operation of the Lounge. The Lounge was, in fact, in operation as a division of the Bingo Palace for an additional seven months and Mr. Prescott wishes to observe that the net income for the Lounge for the month of February under the management company was $22,506.81. The net profits for operation under Community control has been two or three times that amount each month. Mr. Estrada asserts, without the benefit of an accountant's opinion to support his assertion, that payablēs were "built up" and that April profits were actually lower than those reported. What Mr. Estrada does not tell you is that those accumulated accounts payable were accrued under the management company which he heads as a result of their practice of not paying contractors on a timely basis. Over the next two months these accounts were retired, and the Lounge still showed a profit greater than that previously reported by Little Six.

We are at a loss to explain Mr. Estrada's reference to his June 17 "conservative profit plan" which he allegedly submitted to Mr. Prescott. The only document remotely resembling such a plan is attached herewith and applies solely to the Bingo Palace. Indeed, it would be incongruous for him to submit a profit plan for the Lounge, since his firm stopped managing the Lounge in early March.

We have reviewed Mr. Prescott's testimony with him and after examination of the financial reports to which he referred, we have made the appropriate corrections in that testimony.

We thank you for the opportunity to address the Committee and if you or your staff require any further information regarding the operation of the gaming facilities in Shakopee, we'll do all we can to cooperate with you.

Very truly yours,

James E. Townsend

JET/eam

Enclosure

cc: Peter Taylor, Staff Director
    Leonard Prescott, Chairman Mdewakanton Sioux Community

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY,

Plaintiffs,

v. Civil File No. 3-85-415

NORMAN M. CROOKS, JOHN DOE,
JANE DOE, et al.,

Defendants.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The above-entitled matter came on for hearing before Leonard E. Lindquist and Robert J. Sheran functioning as arbitrators in the above-entitled matter by and with the consent of the parties and pursuant to the following Order of the United States District Court, District of Minnesota, Third Division dated March 6, 1983:

> The above matter having come before the Court at Minneapolis, Minnesota on March 6, 1985, and the matter having been discussed in open court with counsel for the parties, and representatives of the parties, in attendance:
>
> At the time of the hearing both plaintiff(s) and defendant(s) agreed that they would enter into arbitration on the various claims involving the interrelationship of the various members of the tribe, with regard to the ownership of the bingo business venture, the buildings used therefor, the rights of the several parties of the Indian community to the profits thereof, ingress and egress, and such other matters as shall be appropriate in order to resolve the differences between the members and segments of the tribe, to be submitted to Leonard Lindquist, Esq., and Robert Sheran, Esq., for resolution;

> That the decision of the arbitrators shall be binding upon the litigants and shall be enforcible by a decree of this Court upon proper application thereto;

James Townsend and Larry Leventhal, 529 S. 7th Street, Minneapolis, Minnesota appeared as attorneys for the Shakopee Mdewakanton Sioux Community. John King, 111 W. Bernard, West St. Paul, Minnesota, appeared as attorney for defendants.

Hearings were conducted on the following dates: 4/30/85; 5/2/85; 5/3/85; 5/7/85; 5/9/85; 5/24/85; 6/6/86.

FINDINGS

1. The Shakopee Mdewakanton Sioux Community is a federally recognized Indian tribe. It is organized under the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. § 476 (1982). It has adopted a Constitution and a set of By-Laws under the provisions of that Act, and is entitled to exercise the powers of a tribal government.

2. Under the Community's Constitution and By-Laws, there are three officers: the Chairman, a Vice Chairman, and a Secretary-Treasurer. The overall governing authority of the Community is vested in the General Council, composed of all voting members of the Community. The three elected officers of the Community are given certain rights and responsibilities under the Constitution and By-Laws, and may be given other additional authority by the General Council.

3. Title to the lands of the Shakopee Mdewakanton Sioux Reservation now is held by the United States of America in trust for the Community, under the provisions of Public Law Number 96-557, 94 Stat. 3262 (Dec. 19, 1980). Prior to the enactment of

this last-cited provision, the lands were held in fee by the United States of America, and leased to the Shakopee Mdewakanton Sioux Community. Under both that former land tenure system and the present system, individual members of the Community can be granted the right to occupy and utilize portions of the Reservation's lands under a land assignment system.

4. Norman Melvin Crooks is a member of the Shakopee Mdewakanton Sioux Community and, until the Fall of 1984, served as Chairman of the General Council.

5. On or about April 10, 1964, I. D. Hill, acting Superintendent, Minnesota Agency, Bureau of Indian Affairs, issued to Norman Melvin Crooks a certificate captioned "Indian Land Certificate" reading in part as follows:

> It is hereby certified that Norman Melvin Crooks, a member of the Mdewakanton band of Sioux Indians residing in Minnesota, has been assigned the following-described tract of land, viz:
>
> South Half of the Northeast Quarter of the Southwest Quarter (S 1/2 NE 1/4 SW 1/4), Section 28, Township 115 North, Range 22 West in Scott County, Minnesota, containing 20 acres, more or less.
>
> It is also certified that the said Norman Melvin Crooks and his heirs are entitled to immediate possession of said land, which is to be held in trust, by the Secretary of the Interior, for the exclusive use and benefit of the said Indian, so long as said allottee or his or her heirs occupy and use said land
>
> . . . .
>
> It is also declared that this certificate is not transferable and that any sale, lease, transfer or incumbrance of said land, or any part thereof to any person or persons whomsoever, except it be to the United States, and as herein provided, is and will continue to be utterly void and of no effect.

6. On May 22, 1980, the General Council for the Shakopee Mdewakanton Sioux Community adopted a Resolution reading in part as follows:

> NOW THEREFORE BE IT RESOLVED, that the Shakopee Mdewakanton Sioux Community does hereby go on record to establish BINGO at the Shakopee Mdewakanton Sioux Community, to raise funds for necessary maintenance of the Shakopee Mdewakanton Sioux Community Center, as well as other necessary expenses, and
>
> BE IT FURTHER RESOLVED, that the Shakopee Mdewakanton Sioux Community does hereby authorize the Chairman of the Shakopee Mdewakanton Sioux Community to conduct the necessary business to get this BINGO into operation at the Shakopee Mdewakanton Sioux Community.

7. Between May 22, 1980 and April 1, 1982 Norman Crooks and others made plans for the construction and operation of a facility to be located on the real estate described in paragraph 5, above, to be used as the site for the conduct of bingo games.

8. On April 1, 1982, the Shakopee Mdewakanton Sioux Community General Council adopted an ordinance licensing and permitting the playing of Bingo on the Shakopee Mdewakanton Sioux Community Reservation.

9. On April 10, 1982, the Shakopee Mdewakanton Sioux Community entered into an Agreement with the New England Entertainment Company as "Contractor", providing in part:

> 1. Engagement of Contractor:
>
> Community hereby retains and engages Contractor for the term of fifteen (15) years, commencing upon the execution of this Agreement, to act solely and exclusively to finance and/or assist the Community in obtaining financing, to construct, improve,

develop, manage, operate and maintain the property as a facility for the conduct of bingo games and to create other revenue producing activities upon said property as mutually agreed upon by Community and Contractor.

Compensation and Reimbursement - In consideration of the performance of the duties as described herein, Contractor shall receive the following management fees:

a. Contractor shall receive as a management fee a sum of money equal to forty-five percent (45%) of the net operating profits for each fiscal year resulting from and in connection with any business activities upon the property.

. . . .

c. Net Operating Profits: For the purpose of the Agreement, 'net operating profits' from the operation of any business activity upon the property shall be defined as follows:

The amount by which all sales, receipts, revenues and/or rentals exceeds reasonable operating expenses, including principal and interest payments on business related loans, but excluding depreciation. Net operating profits shall include in its determination reasonable business related expenses including costs of goods sold, all wages paid, payments made pursuant to the terms and conditions of the Management Agreement, rentals of vehicles, and other direct business related expenses. Subject to the above, net operating profits shall be computed in conformance with generally accepted accounting principles.

The Agreement also provides:

Successors - The benefits and obligations of this Agreement shall inure to and be binding upon the parties hereto, their respective successors and assigns, provided that neither party may assign their interest in the contract without prior written approval of the party.

By subsequent agreements, management responsibility has been assigned first to Pan American Enterprises of Florida and then to Little Six Enterprises.

10. At a Special Meeting of the General Council of the Shakopee Mdewakanton Sioux Community held July 9, 1982, Resolution No. 00100-82 was adopted:

> WHEREAS, the General Council for the Shakopee Mdewakanton Sioux Community has the power under the Constitution of the Shakopee Mdewakanton Sioux Community to promulgate resolutions governing the conduct of the business in the community; and
>
> WHEREAS, the Shakopee Community has entered into a 15-year Agreement with the New England Entertainment Company for the purpose of allowing the New England Entertainment Company to construct and operate a Bingo facility on the Shakopee Mdewakanton Sioux Community; and
>
> WHEREAS, Additional lands are needed by the New England Entertainment Company to provide for sufficient parking and access and egress to the Bingo facility; and
>
> WHEREAS, The only lands available for the additional parking and roadway construction are those assigned to Norman M. Crooks; and
>
> WHEREAS, Norman M. Crooks has agreed to lease these lands to the New England Entertainment Company for a period of fifteen (15) years; and
>
> WHEREAS, Norman M. Crooks will no longer be able to operate his personal economic enterprise on these lands when the Bingo facility is completed and in operation; and
>
> WHEREAS, This will deprive Norman M. Crooks of a substantial amount of income over the next fifteen (15) years;
>
> NOW THEREFORE BE IT RESOLVED, that the General Council of the Shakopee Mdewakanton Sioux Community hereby agrees to allow Norman M. Crooks to lease additional land from his assignment to provide the above mentioned parking and access.

> BE IT FURTHER RESOLVED, That Norman M. Crooks should personally negotiate with the New England Entertainment Corporation for the loss of personal income and property. [Emphasis supplied]

11. The Minutes of the July 9, 1982 meeting contained these notations:

> Discussion followed on Resolution No. 00100-82 regarding the leasing of a parcel of Norman M. Crooks assignment for the BINGO operation and to compensate Norman for the land that may need to be used for the BINGO Operation. The General Council felt that the compensation should not come out of the 55% that would be paid to the Community. The General Council went on to state that since it was Norman M. Crooks land that he be authorized to negotiate with the New England Entertainment Company to see what they would be willing to pay him for the use of his land. Resolution No. 00100-82 was read to the General Council by the Vice-Chairman. Edith Crooks made a motion by voice vote to accept the Resolution as read, seconded by Norman W. Crooks. Vote taken was 21 for 0 against 0 abstention. MOTION CARRIED. (It will now be up to Norman M. Crooks to negotiate with the NEW ENGLAND ENTERTAINMENT COMPANY to see what he could get for turning his land over for the use of the NEW ENGLAND ENTERTAINMENT COMPANY) [emphasis supplied]

12. Five months later, on November 9, 1982, the following Agreement was entered into between Edith E. Crooks, the wife of Norman M. Crooks, and the New England/Pan American Entertainment Company of Florida through A. Estrada.

AGREEMENT

> THE FOLLOWING AGREEMENT is made this 9th day of November , 1982 by and between Edith E. Crooks and New England/Pan American Entertainment Company of Florida;
>
> WHEREAS, The Shakopee Mdewakanton Sioux Community and New England/Pan American Entertainment Company have entered into an agreement; and

WHEREAS, New England/Pan American Entertainment Company will build and operate a bingo facility on the Community's land; and

WHEREAS, Part of the facility will occupy Community land presently owned by Norman M. Crooks which will be relinquished to the Community for their lease with the New England/Pan American Entertainment Company for the construction of the bingo facility;

NOW THEREFORE, in consideration of mutual covenants and other considerations, the parties agree as follows:

1. Norman M. Crooks will relinquish five (5) acres of his land, more or less, to the community to lease for the bingo facility;

2. All burning shall cease on the Crooks' burning site effective October 1, 1982;

3. New England/Pan American Entertainment Company shall pay Edith E. Crooks the sum of Four thousand dollars ($4,000) on or before November 9, 1982; and $11,000 on or before December 15, 1982.

4. New England/Pan American Entertainment Company shall pay Edith E. Crooks the sum of fifteen thousand dollars ($15,000) on or before May 1, 1983;

5. New England/Pan American Entertainment Company shall pay Edith E. Crooks the sum of ten thousand dollars ($10,000) each year for a period of five (5) years, to be paid on the following dates:

   a) May 1, 1984
   b) May 1, 1985
   c) May 1, 1986
   d) May 1, 1987
   e) May 1, 1988

6. In the event that Edith E. Crooks should become deceased prior to May 1, 1988, all remaining monies due her from this Agreement shall be paid to her estate on or before their due date, to be distributed according to the terms and conditions of her last will and testament, if one exists.

Edith J. Travers
Witness

Edith E. Crooks
Edith E. Crooks

/s/ John P. Peterson
Witness

/s/ A. Estrada
New England/Pan American
Company of Florida

13. At and prior to the time the agreement of November 9, 1982 was executed, Norman M. Crooks and Edith E. Crooks, his wife, were engaged in the business of burning elm trees on the premises here involved. This business produced an annual income of approximately $10,000.00. It was this business to which reference is made in the Resolution set out in paragraph 10, above. It was this business which terminated effective October 1, 1982 in conformity with the agreement of November 9, 1982, set out in paragraph 12, above. Although the November 9, 1982 agreement and the July 8, 1983 amendment of it were signed by Edith E. Crooks rather than Norman M. Crooks, it is clear from the evidence that she was acting on his behalf due to the fact that Norman M. Crooks was suffering from a disabling condition of health at the time.

14. On July 8, 1983, Paragraph 5 of the Agreement was amended by changing the dates for the payment of the annual amounts of $10,000.00 to September 30, 1983; December 31, 1983; March 31, 1984; June 30, 1984; September 30, 1984.

This Addendum was signed on behalf of New England/Pan American Little Six Enterprises by A. Estrada.

15. Total payments in the amount of $80,000 have been made, pursuant to the agreement of November 9, 1982, as amended. However, the payments were made from the receipts of the bingo game operation rather than by New England/Pan American Entertainment Company of Florida.

16. During the period from November 9, 1982 and July 9, 1983 it became apparent that the "Bingo Palace," which had by then been constructed, extended beyond the boundaries of a 500 square foot tract which was originally thought sufficient for the purpose. As a result, Norman M. Crooks formally relinquished to the Community on July 9, 1983 a larger tract than that originally contemplated, described as follows:

> A tract of land in the South Half of the Northeast Quarter of the Southwest Quarter (S1/2NE1/4SW1/4), Section Twenty-eight (28), Township One Hundred Fifteen (115) N., Range Twenty-two (22) W., 5th P.M. more particularly described as beginning at the Southwest corner of the NE1/4SW1/4, Sec. 28 thence North 656.59 feet along the west line of the NE1/4 SW1/4, thence east 534.08 feet on a line parallel to the south line of the NE1/4SW1/4, thence south 656.59 feet on a line parallel to the west line of the NE1/4SW1/4, thence west 534.08 feet along the south line of the NE1/4SW1/4 to the point of beginning said tract to contain 7.46 acres, more or less, after excluding 0.59 acres more or less for the Community Center.
>
> Also, unrestricted ingress and egress to the above described parcel of land across the S1/2NE1/4SW1/4 of Sec. 28, of not less than 40 feet in width from County Road 83.

The minutes of the Council meeting of that date state:

> Norman Crooks relinquishes land to the Community on which the Bingo Place is on. Norman will receive 3% of the bingo programs money. (45%) so that the Community will own the land, until the end of the Bingo contract. Dolly/John move to take the 3 % out of the Bingo Program money by hand vote.

17. The phrase "3% of the bingo programs money" as used in the minutes of the July 9, 1983 General Council Meeting refers to a fund consisting of 45% of the 55% of the net operating profits of the "Bingo Palace" which the Shakopee Mdewakanton Community was entitled to retain under the terms of the Management

Agreement of April 10, 1982, set out in paragraph 9 of this Findings of Fact. The remaining 55% of the 55% of the net operating profits retained by the Community is distributed per capita to the members of the Community unaffected by the 3% allocation to Norman M. Crooks.

18. At the time the resolution of July 9, 1983 was adopted the Shakopee Mdewakanton Community had constructive knowledge that Norman M. Crooks had received or was entitled to receive compensation from the New England Entertainment Company or from persons acting on its behalf based on the proceedings recorded in the minutes set out in paragraph 11 of these Findings. Norman M. Crooks was never asked to disclose nor did he disclose the exact amount of this compensation.

19. On May 16, 1984, Norman M. Crooks allegedly executed a Relinquishment reading as follows:

> I wish to relinquish the following description of land to the Shakopee Mdewakanton Sioux Community from my land assignment No. 54.
>
> Part of the S1/2NE1/4SW1/4 Section 28, T. 115 N., R. 22 W., described as beginning at the SE corner of NE 1/4 thence South 175.87 feet, thence West 480 feet to point of beginning; thence West 321.72 feet; thence South 480 feet; thence East 321.72; thence North 480 feet to point of beginning; Scott County, Minnesota, containing 3.54 acres, more or less.
>
> Also unrestricted ingress and egress to the above described parcel of land across the S1/2NE1/4SW1/4 of Section 28, of not less than 40 feet in width from county road 83.
>
> The purpose of this relinquishment action is to officially turn over this site to the Shakopee Sioux Community. This parcel of land contains the cultural center building and the proposed childrens playground.

> Under the above terms, I am officially relinquishing the above described tract of land.
>
> . . . .
>
> Respectfully,
>
> /s/Norman M. Crooks

Norman M. Crooks denies having executed this agreement.

20. Although Norman M. Crooks denies having executed the relinquishment set out in paragraph 19 of these Findings, the uncontradicted testimony of a qualified handwriting expert establishes that the signature appearing on the relinquishment of May 16, 1984 is that of Norman M. Crooks. Norman M. Crooks acknowledged that it was his intent to relinquish the land described in the May 16, 1984 relinquishment as a gift to the Community and concedes that he was actively involved in the proceedings which resulted in the erection of a cultural center on this land at a cost of approximately $1,000,000.00. It is not disputed that this cultural center was intended to be for the use and benefit of the Community. From this it follows that Norman M. Crooks is estopped from claiming entitlement to the land described in paragraph 19, above.

21. During the period from May 16, 1984 until January 8, 1985, the bingo operation was conducted successfully. A "Bingo Lounge" supplementing the "bingo parlor" was established in a cultural center building which had been erected on the land described in paragraph 19, above. However, members of the

Community challenged the leadership of Norman M. Crooks and he was replaced as chairman of the Council. His successors came to the opinion that Norman Crooks had used his authority as chairman of the Council to advance his personal interests in inappropriate ways.

22. On January 8, 1985, the General Council of the community adopted a Resolution reading as follows:

RESOLUTION NO. 1-8-85-002

WHEREAS: The General Council of the Shakopee Mdewakanton Sioux Community is authorized by the Constitution to promulgate resolutions governing the conduct of business in the Community, and

WHEREAS: The Shakopee Mdewakanton Sioux Community has passed a Resolution dated 8-7-9-83 whereby Norman Crooks is paid 3% of Bingo Program monies per month for a 15 year period beginning in July 1983, and

WHEREAS: Norman M. Crooks has entered into an Agreement with New England/Pan-American Entertainment Company dated 9, November, 1982, which provides that he and Edith Crooks be paid $205,000 over a 15 year period beginning on 9, November, 1982, and

WHEREAS: The General Council of the Shakopee Mdewakanton Sioux Community has never been advised of the terms of the agreement of 9, November, 1982, and

WHEREAS: The terms of that agreement would have had a material effect on the determination of the Council to authorize the 3% payments to Norman M. Crooks, and

WHEREAS: The purported Lease of Trust Lands to New England/Pan-American Entertainment Company may in and of itself be invalid and illegal,

NOW, THEREFORE, BE IT RESOLVED THAT:

> All payments to Norman M. Crooks pursuant to the Resolution No. 008-7-9-83 be suspended until such time as an investigation of this matter indicates the propriety of the actions of Norman M. Crooks in these matters.

23. There is no evidence that Norman M. Crooks entered into an agreement with New England/Pan-American Entertainment Company providing for the payment of $205,000.00 over a 15 year period beginning on November 9, 1982. The evidence is clear that the total amount received by Norman M. Crooks and/or Edith E. Crooks pursuant to this agreement was $80,000.00, rather than $205,000.00. The amount of $80,000.00 to have been received by Norman M. Crooks from the New England/Pan-American Entertainment Company for the termination of his tree burning enterprise was fair and reasonable but the payment of this amount from the receipts of the Bingo Palace was inappropriate in light of Resolution No. 00100-82, set out in paragraph 10 of these Findings; the minutes of July 9, 1982 set out in paragraph 11 of these Findings; and the agreement of November 9, 1982 set out in paragraph 12 of these Findings.

24. The agreement of the Community to pay Norman M. Crooks "3% of the bingo programs money", as recorded in the minutes of the meeting of July 9, 1983, is fair and reasonable in light of the services rendered by Norman M. Crooks on behalf of the Community and the land relinquishments by him for the purposes of the enterprise. The Community is entitled to and should recover from New England/Pan-American Entertainment Company or any other persons succeeding to the obligation the sum of $44,000.00

being monies which would have been received by the Community had not the $80,000.00 in payments been made from the Bingo Palace receipts.

25. On February 20, 1985, Norman M. Crooks sent a letter to the General Council of the Community reading as follows:

JOHN P. KING
Attorney at Law
111 W. Bernard West St. Paul, MN 55118
(612) 457-6970

February 20, 1985

Mr. Leonard Prescott & General
Council
Shakopee M. Mdewakanton Sioux
Community, Tribal Office
2330 Sioux Trail N.W.
Prior Lake, Minnesota 55372

Re: Bingo Lounge

Dear Mr. Prescott:

As you are aware the Bingo Lounge and Culture Center Building is located on my assigned property on the reservation. No agreement has ever been made regarding my right to payment for its use by the community.

This is to serve as notice that unless some agreement is reached between the community and myself within ten days from February 20, 1985, this mailing date, that I will take possession of the building and close it. The management company will be required to leave the premises. Further, it will be considered an actionable trespass for anyone, unless authorized by me, to cross or be on the property.

It is anticipated that a fence will be erected to keep unauthorized persons off the property unless an agreement can be quickly agreed upon.

I urge you to bring this matter to the attention of the General Council with all possible haste.

This letter is being signed by me as well as my attorney John P. King.

/s/ Norman M. Crooks
Norman M. Crooks

/s/ John P. King
John P. King,
Attorney at Law

26. The letter of February 10, 1985 was sent to the Community by Norman M. Crooks upon advice of competent counsel and in the good faith belief that the threatened action was justified. The initial moves to block access to the Bingo Lounge and Culture Center were abandoned promptly by Norman M. Crooks in favor of these arbitration proceedings.

27. In addition to the matters covered by Findings of Fact nos. 1-27, the Community has challenged two other transactions arising out of the establishment of the bingo enterprise.

1. The payment of $3,500.00 to each of the following named persons: Glynn Crooks, Amos Crooks, Norman M. Crooks, May Crooks, Norman W. Crooks, Stanley Crooks, Danny Crooks, for relinquishment of lands aceded to the County of Scott for the purpose of construction of an improved roadway leading to the premises.
2. The payment of $30,000 to Alfred Crooks and Mary Crooks for the relinquishment of a trailer home and its site for the uses of the Community.

There is no evidence that Norman M. Crooks obtained any improper or inappropriate benefit because of these payments. The amounts of the payments are fair and reasonable in light of the benefit received by the Community by reason of these relinquishments.

28. The controversy submitted in this arbitration proceedings came about because of misunderstandings which developed between Norman M. Crooks and other leaders of the

Community, attributable in significant part to the fact that they were involved in an enterprise in which none of the members of the Community had prior experience or training. There is no evidence that any of the parties to these proceedings acted out of malevolence or ill will.

CONCLUSIONS

1. The land relinquishments set out in paragraph 16 and 19 above are effectual and binding.

2. Norman M. Crooks and Edith E. Crooks are entitled to receive the compensation described in paragraphs 12, 14, 15 and 16.

3. The arbitrators do not find jurisdiction to determine attorneys fees in the order of appointment issued by the Honorable Miles W. Lord. Therefore the fees of the attorneys for the respective parties must be paid by the client represented.

4. Recovery of any sums inappropriately paid by the New England/Pan-American Entertainment Company enterprises should be secured in proceedings between the Community and New England/Pan-American Enterprises presently pending in the United States District Court for the State of Minnesota, File No. 85-01121.

5. The fees of the arbitrators as fixed by the Honorable Miles W. Lord and the fees of the court reporter shall be paid from funds generated by the Bingo Palace and the Bingo Lounge.

Date: July 2, 1985

L. E. Lindquist

Leonard E. Lindquist

Robert J. Sheran

Robert J. Sheran

Mr. Taylor. I don't have any questions at this time. Thank you very much, Mr. Prescott.

Are you——

Mr. Prescott. This is my attorney, Jim Townsend.

Mr. Taylor. Would you like to make any additional comments?

STATEMENT OF JIM TOWNSEND, COUNSEL, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

Mr. Townsend. Given the fact that we are engaged presently in litigation with the management company, we should also advise the committee that they have appealed the decision of the Assistant Secretary which we have submitted for the record. That appeal was entered in the D.C. court yesterday. So the matter is still not settled.

I think the overriding legal question really was properly addressed by an earlier witness. We can't continue to rely on appropriate decisions—I think thus far good decisions—from the various district and appellate courts that have heard the matter. The legal fees for our firm and the other lawyers that are representing the Shakopee Tribe are taking money away that could otherwise be used for economic development. There are still a number of people out in that community who haven't got more than septic tanks. Some of them even don't have septic tanks. If the legal climate were settled, these moneys could be put to better use on the reservation than to pay to us and other lawyers to represent them in litigation.

Mr. Taylor. Mr. Townsend, was that appeal filed with the U.S. district court or with the Interior——

Mr. Townsend. That's right.

Mr. Taylor. It wasn't the Interior Board of Hearings and Appeals?

Mr. Townsend. No, it went to the district court. Judge Green I believe was assigned the case.

Mr. Taylor. Thank you.

Mr. Prescott. Mr. Chairman?

Mr. Taylor. Yes?

Mr. Prescott. I would like to make a few other comments.

Our contract called for a 15-year length of time, 45 percent of the profits, complete management control. We had no input into what management would do. We had no input as far as what the overhead expenditures would be. We had financial records which were too complicated for our tribe to understand.

I think that tribes that do not have the expertise in the beginning can be plundered, and they can enter into unfair contracts because of the lack of expertise.

The management company invested only a certificate of deposit as partial security for a tribal loan. Our land is what made this bingo prosper. Probably 80 percent of the profits are derived from the land itself, and they claim we put in no monetary value. Management made no direct investment at all in our venture.

But I think these things are what tribes throughout the United States get into because they don't have the expertise. They cannot foresee what $1 million actually can mean for the tribe.

Mr. TAYLOR. I have a little difficulty myself. [Laughter.]

Mr. PRESCOTT. I will conclude with that.

Mr. TAYLOR. Thank you very much, Mr. Prescott.

Mr. Blackbear?

I'm sorry.

STATEMENT OF NELSON JOHNSON, MUSCOGEE CREEK NATION, OKMULGEE, OK

Mr. JOHNSON. Commissioner Foster asked me to summarize the testimony for the Muscogee Creek Nation.

I am Nelson Johnson. I am a former member of the Muscogee Creek National Council, and I am on the commissioner's staff.

We thank you for allowing the Muscogee Creek Nation to present testimony on the issues relating to the protection and control of the tribal gaming. We hope the information contained in our testimony will enlighten the committee on the highly successful operation of our bingo enterprise and relieve the concern about the possibility of demoralization lurking in the background of tribal ventures such as ours.

Our gaming enterprise is an example of what Indian tribal governments can accomplish through self-determination and a cooperative spirit.

We would like to ask that our written testimony be placed in the record.

Let it be understood that the Muscogee Nation is not one of the tribes mentioned in S. 902, section 2-3, who have expressed concern about their own ability to regulate or operate a gaming activity free from the influence of corruption.

We are now experiencing the benefits of the tribal enterprise through a bountiful revenue return and the harsh impact of the Federal cutbacks has been somewhat eased because the Creek Nation bingo provides needed employment for our people.

We have approximately 23 percent unemployment rate in parts of our nation. Creek Nation bingo employs 95 percent Indians. Seventy-three percent of those are of Creek Indian descent. We are enjoying the economic reality of our people having the dignity of working for their own business.

With the revenue accruing to our nation from bingo, we address the needs of our elderly, our children's education, and long-term economic development in areas other than gaming. Our future plans include other enterprises that will fully launch us into the business world and equip our tribes for the challenges of the 21st century.

When we started this enterprise, we planned for it; we developed a tribal code, a gaming code. It was approved by the national council and the Bureau of Indian Affairs. The rules and regulations are governed by the Tribal Gaming Commission. We have onsite offices. We provide daily, constant supervision. We have closed-circuit television that allows us to monitor the game. It monitors the entire facility.

We have strict provisions in our ordinance that no one under the age of 18 is allowed to play bingo. No alcoholic beverages are allowed on the premises at any time.

Through our Tribal Gaming Commission, we are providing a scrupulous mechanism to insure all gaming activities are conducted in the most efficient, honest, and credible manner possible.

It is completely unacceptable for tribal gaming to be regulated by the State government. Any reference to State control is an invasion of the tribal sovereignty and does not meet the goals of the Federal Government's attempt to standardize Indian gaming. States are not standard in their licensing requirements.

Thank you for allowing us to express our concerns on what we feel are vitally important issues concerning the future of Indian self-determination.

[An introductory letter and prepared statement follow:]

MUSCOGEE (CREEK) NATION,
Okmulgee, OK, June 26, 1985.

MARK ANDREWS,
Chairman, Senate Select Committee on Indian Affairs, Hart Senate Office Building, Washington, DC.

GREETINGS: Thank you for allowing the Muscogee (Creek) Nation to present testimony on issues relating to the protection and control of tribal gaming.

Mr. William Foster, Creek Nation Tribal Gaming Commissioner, and Mr. Nelson Johnson of the Gaming Commission staff and a former council member of the Muscogee (Creek) Tribal Council will present the testimony and answer any questions the committee may have in regard to our operations.

We hope the information contained in the testimony will enlighten this Committee of the highly successful operations of our bingo enterprise and relieve the concern about the possibility of demoralization lurking in the background of tribal ventures such as ours.

The competitiveness of gaming is an integral part of our tribal culture. We are not contending we are carrying on a tradition of cultural bingo ceremonies. What we are saying is that while providing needed employment for our people, we are also furnishing an entertainment outlet for them and others who frequent our facility in a controlled atmosphere of no alcoholic beverages in a totally adult clientage.

Our gaming enterprise is an example of what Indian tribal governments can accomplish through self-determination and a cooperative spirit.

Respectfully,

CLAUDE A. COX,
Principal Chief

PREPARED STATEMENT OF THE MUSCOGEE (CREEK) NATION

Since the Muscogee (Creek) Nation is actively engaged in the operation of a bingo facility, we feel our comments on the proposed legislation to federally regulate tribal gaming are necessary to the well-being of our tribal venture.

Let it be understood, the Muscogee (Creek) Nation is *not* one of the tribes mentioned in S. 902, Section 2 (3) who have expressed concern about their own ability to regulate or operate a gaming activity free from the influence of corruption.

The Muscogee (Creek) Nation is confident our gaming enterprise meets the highest standards of credibility and will remain in that category. Much consideration and planning have been implemented into the development of a highly successful entertainment facility. Our Nation is a national leader in Indian self-determination. We feel our role is as important to other tribal governments as it is to ourselves. To the non-Indian public, how we conduct our business is a reflection on all tribes.

After careful review and consideration of S. 902 and H.R. 1920, the Muscogee (Creek) Nation has found that both the proposed legislation are generally in the best interest of the Indian Nations. Supporting the intent of both Bills, we believe certain minor word changes will clarify ambiguities and work to the benefit of Indian gaming ventures.

Before we go into our recommendations, we will historically explain our gaming enterprise land base, briefly describe the status of the tribe and give an overall view of our gaming operations: The Muscogee (Creek) Nation is a federally recognized Indian tribe located within an eight county area in Northeastern Oklahoma. Forty thousand tribal citizens reside within Creek Nation with approximately twenty thousand more living throughout the United States. This ranks the Muscogee (Creek) Nation as possibly the third largest Indian tribe in America.

In the early 1800's, at the insistence of the federal government, the Muscogee people were removed from Georgia and Alabama and established in this area. Since that time, the tribe has maintained one of its original land holdings alongside the Arkansas River in what is now Tulsa, Oklahoma. (According to the 1980 census, Tulsa is the second largest Indian populated metropolitian area in the United States). In November of 1984, the Muscogee (Creek) Nation opened a thirty thousand square feet, twelve hundred seat bingo facility on this riverside tract. The facility is known as Creek Nation Bingo.

EMPLOYMENT

We are now experiencing the benefits of this tribal enterprise through a bountiful revenue return. The harsh impact of federal cutback has been somewhat eased because of the Creek Nation Bingo providing needed employment for our people. Some areas of our Nation carries up to a 23 per cent unemployment rate, others range from 12 to 18 per cent. Creek Nation Bingo provides 95 per cent Indian employment, of which 73 per cent are one-sixteenth to four-fourths Creek Indian descent. An economic reality has been accomplished with our people enjoying the dignity of employment created by the ownership of our own business.

With the revenue accruing to our Nation from the Bingo, we address the needs of our elderly, our children's education and long-term economic development in areas other than gaming. Our future plans include property development, farming and ranching and other enterprises that will fully launch us into the business world and equip our tribe for the challanges of the twenty-first century.

TRIBAL GAMING ORDINANCE/GAMING COMMISSION ACTIVITIES

The Muscogee (Creek) Nation is functioning as a self-government. In planning for the bingo venture, we developed a Tribal Gaming Code which was approved by the Muscogee National Council and the Bureau of Indian Affairs. The rules and regulations are governed by a Tribal Gaming Commissioner. The Commissioner employees five staff members, all of whom are tribal members with credentials ranging from law degrees to Certified Public Accountants, Criminal Justice Studies, and Certified Business Administration. These employees occupy offices on site at the bingo facility. They oversee daily operations and activities—assuring compliance with the Tribal Gaming Ordinance. Two strict provisions of the ordinance are: (1) No one under the age of 18 is allowed to play bingo at the facility, nor allowed on premise unless accompanied by a parent or guardian; and (2) No alcoholic beverage is allowed on premise at any time.

To insure the financial well-being of the Muscogee (Creek) Nation, the Tribal Gaming Commission submits weekly revenue summaries, monthly reports, daily observations, cost analysis and cost projections to the Creek Nation. A television monitor is installed for increased surveillance and protection of the operations.

Through our Tribal Gaming Commission, we are providing a scrupulous mechanism to insure all gaming activities are conducted in the most efficient, honest and credible manner possible.

CONTRACTED MANAGEMENT

With the approval of the Bureau of Indian Affairs, the Muscogee (Creek) Nation negotiated a contract with a management firm, Indian Country U.S.A. After an unrestricted investigation into the personal and financial background of the owners of the firm, we found them to be highly principled in their operations and knowledgable of working with Indian people; two standards our tribe demanded before contracting.

A stipulation in the management contract is that Indian Country adheres to the preference of employing Muscogee (Creek) Indians first, and then members of other federally recognized tribes in all positions where an Indian applicant is equally, or more qualified than a non-Indian. An agreement between the Creek Nation and the management firm is that while employing Creek Indians, they will also place qualified Creeks in top management positions to receive full benefits of on-the-job-training for the distinct purpose of eventually taking over complete management for the tribe once the contract expires.

The management supplies the Muscogee (Creek) Nation with audits performed routinely by a national public accounting firm. We feel a mutual respect for tribal goals, objectives and the rules and regulations of the Tribal Gaming Ordinance has been established between the Muscogee (Creek) Nation and the contracted management.

TRIBAL RESPONSIBILITY/ACCOUNTABILITY

The Muscogee (Creek) Nation has always been considered a role model among Indian tribes in areas of service to our people and financial accountability. For the past three consecutive years, the Muscogee (Creek) Nation has been awarded the 'Certificate of Conformance for Financial Reporting', which is the highest recognition given by the Government Finance Officer's Association of the United States and Canada for comprehensive annual financial reports. The Muscogee (Creek) Nation is the only Indian Tribal government to receive the award.

In 1984, the Muscogee (Creek) Nation, through Public Law 97-638, contracted all services formerally rendered by the Bureau of Indian Affairs in our area. We were audited by the Inspector General's Office of the Department of the Interior and designated as a 'model contractor' in a letter to the Assistant Secretary of the Interior. Since 1977, we have operated our own hospital, the Creek Nation Community Hospital, and are currently in the process of appropriating revenue from the Creek Nation Bingo to assist our tribal members in payments of health care debts directly resulting from a decrease in federal funding to our tribal health program.

The Muscogee (Creek) Nation has been—and is now even more persistent—in establishing a self-reliant Nation for our Creek people. With the accomplishment of this goal for our own tribe, we hope our efforts will be beneficial to other tribes and wish to cooperate with them in every way possible.

COMMENTS AND RECOMMENDATIONS ON PROPOSED LEGISLATION FOR TRIBAL GAMING REGULATION

1. With regard to the issue of who should regulate tribal gaming, we believe the most acceptable method is for individual tribes to maintain their own mechanism of regulatory procedure.

A less acceptable method would be an independent regulatory commission be set up with significant tribal input. This commission should be comprised of experts in the field of gaming and business and be financially supported by tribal gaming.

The least acceptable method would be a commission set up and headed by the Department of the Interior. Our experience with the Bureau of Indian Affairs, and the reality of federal budget austerity, makes us wary of creating another responsibility for the Department of the Interior.

A completely unacceptable method would be for tribal gaming to be regulated by state government.

2. In S. 902, Section 2, we find the term 'Indian Country' more acceptable than the term 'reservation' in H.R. 1920, Section 2; as long as Indian Country includes all tribally owned land throughout the state of Oklahoma.

3. In H.R. 1920, Section 6 (C), the Muscogee (Creek) Nation finds the restriction which requires an individual or entity to comply with state criteria in order to be eligible for tribal operation is unacceptable. We feel this is an invasion of tribal sovereignty and does not meet the goals of the federal government's attempt to standardize Indian gaming, because various states are not standard in licensing requirements.

We will support legislation allowing tribal governments to employ—at their own discretion—consultants and operational management who may not be individuals or entities affiliated with the tribe.

4. The Muscogee (Creek) Nation can support the language of S. 902, Section 6 (B) (2), expanding the uses of which net profits may be applied to include charities and contributions to local governments.

Thank you for allowing us this written testimony to express our considerations on what we feel are vitally important issues concerning the future of Indian self-determination.

Mr. TAYLOR. Thank you very much for the testimony.

I don't have any questions.

I think we can have a panel of the last three witnesses. I will have Floyd Blackbear, secretary of the Business Committee of Cheyenne-Arapaho Tribes, and Charles Hobbs, of Hobbs, Straus, Dean & Wilder, representing a number of tribes.

Our last witness after this panel will be Robert Baker, field investigator for the Humane Society of the United States.

Mr. Blackbear, do you want to proceed?

STATEMENT OF FLOYD BLACKBEAR, TRIBAL SECRETARY, 24TH BUSINESS COMMITTEE, THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA

Mr. **Blackbear**. Thank you, Mr. Chairman, for allowing me to come before you today. It is certainly a pleasure to be here and to hear various tribes think about the proposed legislation and to talk about their own tribal bingo operations.

I have submitted a written statement of the Cheyenne-Arapaho Tribes of Oklahoma, their position. It is quite lengthy. So I am hoping that this will be entered officially into the record.

Mr. **Taylor**. To the extent possible——

Mr. **Blackbear**. I would like to introduce at this time two of the tribal members that have accompanied by on this trip. One is our bingo manager who is a tribal member of the Cheyenne Tribe, Leslie Medicinebear, and the other gentleman is the business committee representative of the Cheyenne-Arapaho Tribes. He is also an Arapaho member, Don Reed.

[Both gentlemen stand from audience.]

Mr. Chairman, my name is Floyd Blackbear. I am the tribal secretary of the 24th Business Committee of the Cheyenne-Arapaho Tribes of Oklahoma. I was elected to the business committee in 1983. I currently live in Watonga, OK, which is 70 miles northwest of Oklahoma City, where our current bingo operation is located.

The Cheyenne-Arapaho Tribes live in the northwest part of Oklahoma, with a tribal enrollment of 8,722 tribal members. The tribal headquarters is located in Concho, OK.

Rather than going into the written part, I would like to submit a verbal testimony at this point.

Mr. **Taylor**. The written statement will be made a part of the record.

Mr. **Blackbear**. Our position on this legislation is that we are taking a position as the Acoma Pueblos stated in their testimony, that they oppose any legislation. The reason why the Cheyenne-Arapaho Tribes oppose any type of legislation is that we are soley owned and operated by the tribes, and our management, our government council are by the tribes themselves. We feel that we are exercising a governmental responsibility to administer the economic development as well as to provide services for tribal members.

One of the things that I feel—our bingo operation has created employment, and our bingo representative in that area represents six communities. To see Indian people working with the tribes developing this type of employment has given new meaning to many young people that are currently employed. We are in the process of expanding our second operation which will also employ additional people and provide more revenues.

The revenues have enabled us to purchase a van for our senior citizen program. We have provided revenues for youth activities, and we are in the process of experimenting with revenue to develop a smokeshop which is currently being administered in the bingo area.

One of the good things I like about this bingo—I've gone down there and it is a good feeling to see non-Indian and Indian people gathering, fellowship. It is just an atmosphere there is no racial tension; there is no animosity. It is all positive. I feel that this is something that we need more and more every day. We need communities coming together to bridge these racial feelings that separate us. Many of the comments from the non-Indians is that they feel real positive about this sort of atmosphere.

We do have security. It is air-conditioned, well lighted. We haven't had any problems. I feel that we have demonstrated our capability of providing and regulating bingo.

In summary, at this point I would like to read: The Cheyenne-Arapaho Tribes of Oklahoma are opposed to any type of Federal legislation or regulation for gaming activities for Indian tribes. However, the Cheyenne-Arapaho Tribes would support legislation if the adherence to such rules and regulations was not mandatory and was not written in a manner that presented or constituted a threat to the tribe's sovereignty. As the proposed Federal rules and regulations do now, it is the intent of the Cheyenne-Arapaho Tribes of Oklahoma to preserve and protect the rights of its people and its tribal government from all attempts to destroy our sovereign nation.

The Cheyenne-Arapaho Tribes have submitted documents that have conveyed similar opinions in the past and shall continue to do so in order to protect our rights to exist as a sovereign nation within a nation.

I thank you for the privilege of appearing before you. I hope and I have conveyed the belief of the Cheyenne-Arapaho Tribes in this very important hearing.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF FLOYD BLACKBEAR, TRIBAL SECRETARY, 24TH BUSINESS COMMITTEE, THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA

My name is Floyd Blackbear, Tribal Secretary of the 24th Business Committee of the Cheyenne & Arapaho Tribes of Oklahoma. I was elected Business Committee Representative in 1983, and I live in Watonga, Oklahoma. The Cheyenne & Arapaho Tribes live in the Northwestern part of Oklahoma with a tribal enrollment of 8,722 tribal members. The tribal headquarters is located in Concho, Oklahoma. I would like to present the following testimony on behalf of the Cheyenne & Arapaho Tribes of Oklahoma.

The Cheyenne & Arapaho Tribes of Oklahoma strongly oppose any type of federal legislation or regulations for gaming activities for Indian Tribes. All Tribes should be able to determine their own future by retaining their ability to promote tribal economic development, without having to contend with further federal constraints being placed upon them. Federal legislation in this area would hinder all Tribes in their efforts to be self-sufficient. Most importantly, imposed federal regulations would affect the ability of all tribes to enact proper tribal legislation on gaming activities, and severely hinder an inherent process that is a responsibility of all tribal governments.

If federal statutes are enacted, then the federal regulations would interfere with the right of all tribes to enact their own laws and be governed by them.

The Cheyenne & Arapaho Tribes believe that the elected leaders of the Tribes should retain their authority over matters that affect the internal and social relations of tribal life.

The proposed federal regulations are another example of interference by the federal administration that is totally inconsistent with the concept of Indian sovereignty.

A number of federal courts have upheld the rights of Indian Tribes to sponsor and regulate gaming activities on their reservations.

The Cheyenne & Arapaho Tribes believe that the proposed implementation of federal regulations may be intended to be of assistance to the tribes, but in actuality, the regulations are an infringement of our rights as sovereign entities.

It is up to the Tribes to develop and establish the necessary regulations that will insure the proper protections that will dictate that the gaming activities on the tribal reservations are conducted in a healthy and honest fashion.

The Cheyenne & Arapaho Tribes believe that all Indian Tribes have the exclusive right to regulate gaming activities that are not prohibited by federal law, and which are conducted within a state, which does not, as a matter of public policy, prohibit such gaming activities.

In 1982, The Cheyenne & Arapaho Tribes 23rd Business Committee began to examine the prospects of establishing tribal bingo operations as a mechanism to bring in revenues that was needed to sustain and contend with the ever-increasing costs of tribal government. The steady decline of the funds available from the federal government was another factor that made the Cheyenne & Arapaho Tribes consider the necessary development of appropriate tribal legislation in this area.

The Cheyenne & Arapaho Tribes after determining that they were going to establish tribal bingo operations on its reservation began with the development and enactment of a tribal bingo ordinance governing all aspects of this proposed gaming activity. The Cheyenne & Arapaho Tribal Ordinance reinforces the C & A Tribes committment to the principal of self-government, and specifically provides, that revenue from the tribal bingo operations shall be utilized to provide a wide range of community services including governmental services, health, education, and other social services.

The Cheyenne & Arapaho Tribal Bingo Ordinance adopted in April, 1983, establishes the rules and regulations for control of tribal bingo operations on tribal lands. The C & A Tribes approach to the handling of tribal bingo operations has been to consider all major operations to be established on tribal lands as the sole responsibility of the Cheyenne & Arapaho Tribal Government. This concept has more or less created a monopoly of all major bingo operations that may be established on tribal lands. The Cheyenne & Arapaho Tribes firmly believe that they have provided the necessary regulations through the enactment of proper tribal legislation. The Cheyenne & Arapaho Tribes maintain the philosophy that tribal control of tribal operations in gaming activities through positive tribal legislation is a proper exercise of sovereign power as well as a legitimate means of generating revenue for governmental operations and programs.

Although the Cheyenne & Arapaho Tribes have not been in contact with other Tribes concerning this proposed legislation, it is obvious that some tribes may express the similar opinion against enactment of the proposed regulations. It is also apparent that there are tribes that will benefit from the enactment of these regulations, due to the fact, that the proposed legislation requires compliance of existing management agreements within one year's time. This provision in the proposed federal rules and regulations, allows those tribes to be able to extricate themselves from otherwise legal and binding arrangements, in order to bring their current management agreements into compliance. Then, there are those tribes, that have placed themselves into legal situations where they entered into a management agreement that is too long in terms of years, or they have limited their percentage of the revenue to less than half, will obviously benefit from the proposed legislation. Many tribes involved in management agreements are becoming aware that their tribal members are capable of learning and managing their own operations, but cannot assume control until the management agreement has expired.

Federal intervention may create or require additional tribal costs or expenses necessary to allow tribes to meet the prescribed compliance conditions due to the implementation of the federal regulations. If a tribe determines the need to institute changes or amendments to the tribal ordinance pursuant to the federally policies, then the tribe would have to submit all proposed changes, amendments, through the designated federal agency for review and approval. This process would require the tribes to be placed in a situation of having to wait on the federal agency to go through the review process, thus delaying the tribe's ability to conduct business and deal with it's responsibilities.

The Cheyenne & Arapaho Tribes believe that the establishment of a gaming commission is essentially a step in the right direction, however, it should be understood that individual tribes at the present time, possess the capability to establish their own gaming commission through the enactment of their own tribal ordinances or resolutions.

The proposed gaming commission as outlined in the proposed rules and regulations may possess too much responsibilities and authorities, and would appear to be establishing yet another layer of bureaucracy for Indian tribes to deal with, that may further cloud the issue of the federal government responsibilities and their relationship to Indian tribes.

The Cheyenne & Arapaho Tribes would recommend that the establishment of a gaming commission to be based upon directing its attention to the providing of technical assistance, and the accumulation of data on questionable operators, individuals, management firms, and provide this data to the tribes when requested.

If the proposed rules and regulations were adopted as written. The Cheyenne & Arapaho Tribes would question the ability of the Bureau of Indian Affairs to enforce and interpret the regulations effectively and competently, due to the B. I. A.'s past track record in managing tribal affairs and resources. This is especially true concerning the management of oil and gas resources for the Cheyenne & Arapaho Tribes as well as other tribes.

The Bureau of Indian Affairs lack of management capabilities is well documented and should provide enough justification to determine whether or not there should be increased responsibilities and duties assigned to this federal agency.

If there are sufficient requests from tribes that desire the implementation of federal rules and regulations in the gaming activities area, then there should some type of assistance made available to them. The Cheyenne & Arapaho Tribes would recommend that these tribes so desiring should be able to have some form of federal regulations that they can observe and comply with. However, the Cheyenne & Arapaho Tribe as well as other tribes not in favor of this legislation should not be compelled to adhere to the proposed rules and regulations, because some tribes are willing to subject themselves to further federal control and sanctions, and lose a part of their sovereign rights and responsibilities in the process.

The Cheyenne & Arapaho Tribes offer the recommendation, that if the proposed rules and regulations are forthcoming, that the application of the federal rules and regulations be optional to each tribe and not mandatory, due to the various stages of development that each tribal government exists in today.

In summary, the Cheyenne & Arapaho Tribes are opposed to any type of federal legislation or regulations for gaming activities for Indian tribes. However, the Cheyenne & Arapaho Tribes would support legislation, if the adherence to such rules and regulations was not mandatory and was not written in a manner that presented or constituted a threat to a tribe's sovereignty, as the proposed federal rules and regulations do now. It is the intent of the Cheyenne & Arapaho Tribes of Oklahoma to preserve and protect the rights of its people and its tribal government from all attempts to destroy our sovereign nation. The Cheyenne & Arapaho Tribes have submitted documents that have conveyed similar opinions in the past, and shall continue to do so, in order to protect our right to exist as a sovereign nation within nation. Gentlemen, I thank you for the honor and privilege of appearing before you, and I hope, I have conveyed the beliefs of the C & A Tribes in these very important hearings.

Mr. TAYLOR. Thank you very much, Mr. Blackbear. That was very excellent testimony. I am very pleased to hear this feeling about Indians and non-Indians sitting down together in a very communal spirit. It is a very interesting aspect of these whole operations.

Mr. BLACKBEAR. Thank you very much.

Mr. TAYLOR. Mr. Hobbs?

STATEMENT OF CHARLES HOBBS, COUNSEL, HOBBS, STRAUS, DEAN & WILDER, WASHINGTON, DC, ON BEHALF OF THE MENOMINEE TRIBE OF WISCONSIN; THE MICCOSUKEE TRIBE OF FLORIDA; THE POARCH BAND OF CREEK INDIANS, ATMORE, AL; AND THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, ND

Mr. HOBBS. Thank you, Mr. Chairman.

I am here today on behalf of four tribes who are the Menominee Tribe of Wisconsin; the Miccosukee Tribe of Florida; the Poarch Band of Creek Indians of Alabama, whose chairman testified earlier and, of course, with which we have nothing inconsistent here; and the Three Affiliated Tribes of the Fort Berthold Reservation of North Dakota.

Of these four tribes, two have active bingo operations in being and two more are thinking of it. All support the bill in principle. They wish to reserve their right to comment on details later on, but basically they support the concept of the bill.

In the case of the Poarch Board, whose operation I am well familiar with, the comment of Mr. Blackbear that there was a sense of—almost a cooperative sense, an excellent sense of cooperation between the white community and the Indian community certainly does exist down at Poarch which I have seen. It is one important reason why these tribes support the continued power to operate bingo if their tribal governments wish to do so.

We have a prepared statement which the committee has. We assume that that will be put into the record. I see no need to read it now, unless you would like me to do so.

Mr. TAYLOR. Thank you. We will make that a part of the record at this point. Thank you very much.

Mr. HOBBS. Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF CHARLES A. HOBBS ON BEHALF OF THE MENOMINEE TRIBE OF WISCONSIN, THE MICCOSUKEE TRIBE OF FLORIDA, THE POARCH BAND OF CREEK INDIANS AND THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Mr. Chairman and members of the Committee: My name is Charles A. Hobbs. I am an attorney with the Washington, D.C. law firm of Hobbs, Straus, Dean & Wilder, and present this statement on S. 902 on behalf of the Menominee Tribe of Wisconsin, the Miccosukee Tribe of Florida, the Poarch Band of Creek Indians and the Three Affiliated Tribes of the Fort Berthold Reservation. We hope that this statement will aid the Committee as it addresses important questions about the proper role for the federal government in Indian gambling activities.

Senator DeConcini, the sponsor of S. 902, has described his bill as a "discussion draft" that is intended to give tribes and others concerned with gambling on Indian reservations a point from which to help design a coherent federal policy toward such activities. We endorse the general policy it would establish. Some of the details may be subject to different opinions, and while our clients support the basic thrust of the bill, by this statement we do not mean to suggest that we are in agreement with every provision as drafted. Substantial changes may be recommended as the bill evolves.

As you know, the policy of the federal government for many years has been to encourage tribal self-determination and to discourage federal or state government dictation of how tribes should conduct their own affairs. While some of the provisions of S. 902 may be viewed in some respects an infringement of tribal sovereignty, some tradeoff seems reasonable in return for federal assurance that tribal gaming operations will not be subject to arbitrary and often hypocritical state interference, or to costly, lengthy and politically devisive litigation over whether tribes may operate such games.

As we read Section 6(a), the key section of the bill, it would incorporate the approach federal courts have already taken on the issue of the extent to which Indian gambling operations must conform to state gambling laws; i.e., the bill would simply reaffirm existing law. That is, where a State's public policy, as a matter of criminal law, prohibits a form of gambling to be conducted and played within its borders, that prohibition shall also apply in Indian country in that State. Where, however, a State merely regulates a form of gambling, the state's regulations do not apply to activities conducted on Indian reservations in the State. This is the so-called "criminal/prohibitory—civil/regulatory" test employed by federal courts to identify the nature of a state's public policy when particular forms of gambling operations on Indian reservations are challenged.[1]

Because the term "State public policy as a matter of criminal law" is not expressly defined in the bill, we recommend that at least the legislative history of S. 902 make clear that the term is intended as a reaffirmation of the test applied in existing case law. Such reference should be directed at Section 6(a), and the Section 2(2) Congressional finding that federal courts have allowed Indian gaming operations in states which do not "as a matter of public policy, prohibit such gaming activity."

Our final comment about specific bill provisions concerns the Section 3(3) definitions of "Indian country." Part of this definition is taken from the definition in 28 U.S.C. § 1151, which is widely relied on by the courts in both civil and criminal contexts. We wonder why the § 1151 definition was not used verbatim, even though some of its language is obsolete. By apparently modernizing the language, there may well be questions about what differences are intended. We suggest that either the Senate Report explain that no differences are intended and that the S.902 language is merely a modernization of § 1151, or that the language be changed to adopt § 1151 by cross reference.

Mr. Chairman, Senator DeConcini is to be commended for sponsoring S.902, which in our opinion provides a workable system for safeguarding tribal interests , and which, at the same time, recognizes that operation of gaming enterprises is a legitimate tribal activity, and preserves to tribes the right to decide for themselves whether they want to use this means to generate much-needed revenues.

Revenue generation is one of the most basic requirements for operation of government activities. On many if not most reservations, where unemployment is devastatingly high and commercial and industrial activity are depressingly low, the tribes' sovereignty and ability to discharge their basic governmental functions—education, health, police and fire protection, economic development, etc.—are strangled for lack of revenue. For many tribes, gaming operations have provided the revenues necessary to continue tribal programs that are no longer federally funded, or to expand tribal services where federal programs have been inadequate. In a time of severe federal budget cutting, Indian tribes should not be deprived of this important new source of tribal revenue.

More and more states and local governments around the United States are using gaming enterprises to generate new revenues, and, as Senator DeConcini has recognized, Indian tribes should have equal opportunity to do likewise. The plethora of state-sponsored lotteries, state-sanctioned parimutuel wagering, and other legally permissible forms of gaming have made obsolete the previous moral stigma attached to gaming enterprises. Of course, such activities may present problems, but the Indian tribal governments that have established gaming enterprises have demonstrated that they are capable of solving those problems. They, and tribes who wish to enter gaming activities in the future, need the protection that S. 902 would afford.

We appreciate the opportunity to testify in support of the basic principles of S. 902.

HOBBS, STRAUS, DEAN & WILDER,
FEDERAL BAR BUILDING,
Washington, DC, June 27, 1985.

Hon. MARK ANDREWS,
U.S. Senate, Washington, DC.

RE: S. 902

DEAR SENATOR ANDREWS: Yesterday the undersigned testified in favor of the principles of S. 902, on behalf of four tribes (Fort Berthold, Poarch Band of Creeks, Miccosukee and Menominee). We were advised the record would be open for two weeks.

This is to inform you that the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, wishes to associate themselves with our statement, for the purpose of yesterday's hearing.

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[1] The use of the "criminal/prohibitory—civil/regulatory" test began after the Supreme Court's decision in *Bryan* v. *Itasca County*, 426 U.S. 373 (1976). It has since been employed in Indian gambling cases. See, e.g., *Seminole Tribe of Florida* v. *Butterworth*, 658 F.2d 310 (5th Cir. 1981).

By copy of this letter to Senator Abdnor, we are advising him of this development. Please let us know if you have any questions.

Sincerely,

HOBBS, STRAUS, DEAN & WILDER.

Mr. HOBBS. Thank you, Mr. Chairman.

Mr. TAYLOR. Our last witness is Mr. Robert Baker, field investigator for the Humane Society of the United States.

Mr. Baker, I, frankly, did not think we would get through the witness list today, and I am pleased we were able to do so.

STATEMENT OF ROBERT O. BAKER, FIELD INVESTIGATOR, HUMANE SOCIETY OF THE UNITED STATES, WASHINGTON, DC

Mr. BAKER. Thank you.

I appreciate the opportunity to be able to testify here and for allowing me, because I do know because of time constraints it was difficult.

For the record, my name is Robert Baker. I am a field investigator for the Humane Society of the United States.

The Humane Society of the United States would like to take this opportunity while the committee is studying the gaming operations on Indian reservations to express our concerns about parimutuel gaming on dog racing. Our concerns are based on the fact that there are cruelties inherent in the sport of dog racing.

Specifically, the most egregious of these abuses is the way the dogs are trained to race. When you go to a race track and you see the dogs race, they are chasing a mechanical rabbit which goes around the race track. In training, to get these dogs to do this, they tie a live animal to the mechanical arm instead of the mechanical rabbit. This is usually a rabbit, a chicken, a guinea pig, sometimes even kittens. The dogs are allowed to chase the animals, and this gives them the incentive to chase this mechanical lure. When the training process is over, the arm is slowed down and the dogs are allowed to attack and maul the animal. In many instances, which we think is the height of inhumanity, they don't even put the animal out of its misery; they will use it on another set of dogs. This is continued over and over again. This is a major concern to us.

This has been documented by many of our investigators. It has been documented in news media, ABC's "20/20," and even in my testimony which we have submitted we list documentation, documentation as recently as February of 1985 from the greyhound industry themselves affirming that this is going on.

Because of our opposition to the cruelties involved in this activity, we have been lobbying very hard to stop the expansion of this sport into other States. Just within the last 2 years we have blocked legislation to legalize dog racing in 15 States, and it is because of this success, which sort of backfired on us because now the dog racing industry—or I should say some people in the dog racing industry—are looking for ways to expand their sport, because they are being blocked. The States will not condone it because of the animal welfare concerns. They are now turning to Federal lands, and specifically Indian reservations.

The first attempt was the Santa Ana Pueblo in New Mexico, but there are other prospects being talked about in other States where it is prohibited.

Mr. TAYLOR. Does your testimony identify those 15 States?

Mr. BAKER. No, it doesn't by name. I can submit that later on for you.

Mr. TAYLOR. I think that might be helpful to know what States it is that have rejected dog racing.

Mr. BAKER. Okay. I will be happy to do that.

[Subsequent to the hearing the following correspondence was received for the record:]

THE HUMANE SOCIETY OF THE UNITED STATES,
Washington, DC, July 1, 1985.

Mr. PETER TAYLOR,
Staff Director, Select Committee on Indian Affairs, Hart Senate Office Building, Washington, DC.

DEAR MR. TAYLOR: During my oral testimony in reference to Senate Bill 902 before the Select Committee on Indian Affairs on June 26, 1985, you requested that I submit to you a list of the fifteen states which I referred to in my testimony. The fifteen states in which unsuccessful attempts were made to legalize pari-mutuel gambling on dog racing from 1983 to the present are the following:

1. Delaware
2. Hawaii
3. Illinois
4. Kansas
5. Kentucky
6. Louisiana
7. Michigan
8. Minnesota
9. Mississippi
10. Ohio
11. Oklahoma
12. Pennsylvania
13. Tennessee
14. Texas
15. Wisconsin

If you need further information or documentation please feel free to contact me. I again wish to extend my appreciation to you and the Select Committee on Indian Affairs for permitting me to testify on this issue.

Sincerely,

ROBERT O. BAKER,
Field Investigator, Department of Investigations.

Mr. BAKER. I can give you one example. Oklahoma recently just rejected it, and that is why they are considering putting—the person who wanted to build the dog racing track, when the bill did not get through—or was not even scheduled for a House vote—he has indicated that he is going to donate this land to an Indian tribe and make it Indian trust land and then build this dog racing track. Now there has been no formal submission of this to the BIA yet, but people are considering this.

We are very concerned about this. The reason we are concerned is not only because the cruelties are there, but it has been unable to be regulated. Even the States that have dog racing now, that they have introduced it and now they have come to realize these cruelties, they have been unable to regulate it because the animals are trained throughout the country. If an Indian reservation or even a State wishes to have dog racing to fill their racing cards, they have to draw dogs from out of State which they have no control over.

There is only one State that has dog racing which acquires the majority of their dogs for their racing programs from within inside the State. To do this on an Indian reservation, it would be totally impossible for them to raise all these dogs.

Mr. **Taylor**. I would assume among the 15 States that there were more than just the humane reasons that may have brought about——

Mr. **Baker**. In some instances, yes, to be quite honest, there were—because in some States there are moral issues concerned about gambling. But I would say the majority of those States, it was directly due to animal welfare concerns. It is a very cruel practice. When we show legislators films of this going on, it certainly has an effect on them.

Mr. Guccione from the National Greyhound Association went to great lengths to show you how the National Greyhound Association regulates the sport, but he didn't tell you about regulating the training which the National Greyhound Association does not regulate, nor does anybody in the industry regulate it.

Mr. Guccione pointed out the Sports Illustrated article which stated that greyhound racing was as clean as a hound's tooth, or something like that. What he failed to mention was that article went on in very graphic details, and I do not want to read this to you now, but could I submit this later on, because I was not aware he was going to bring that article up? It goes on in very graphic details to depict the cruelties involved in greyhound racing.

Mr. **Taylor**. Why don't you make that an attachment to whatever letter you send identifying these other elements.

Mr. **Baker**. OK.

In closing, basically what I would like to say, because of the cruelty involved and because of the difficulty in regulating this activity, we would like to see this bill amended to prohibit parimutuel gambling on dog racing on Federal lands and Indian trust lands.

Thank you very much.

[The prepared statement follows:]

Prepared Statement of Robert O. Baker, Field Investigator, Department of Investigations, the Humane Society of the United States

My name is Robert Baker. I am a field investigator for The Humane Society of the United States (HSUS), based at our national headquarters in Washington, DC. The HSUS is a national nonprofit organization dedicated to the prevention and elimination of cruelty to animals. The HSUS is the largest national humane organization in the country with a constituency of more than 350,000 persons.

Because of the Select Committee on Indian Affairs examination of gambling operations on Indian lands, I feel it appropriate to bring to your attention The HSUS's concern over pari-mutuel gambling on dog racing on Indian lands. The HSUS is opposed to pari-mutuel gambling on dog racing because this activity results in the unjustified exploitation and abuse of the dogs forced to participate in these events. In addition, thousands of other animals are maimed and brutally killed in cruel training practices common to the racing industry.

We originally became involved in this issue when our New Mexico constituents expressed their concern to us that dog racing was to be introduced via Indian lands in spite of its illegality in their state. We consequently conveyed our position on dog racing to the Indian Pueblo and, at their request, met with their representatives to discuss our position on this issue. We told them we could not support their efforts to bring dog racing to Indian lands and reiterated that position in a letter the following day.

Unfortunately, the law firm which represents Indian interests used that meeting to infer that we concurred with their proposal and subsequently presented false and misleading information to Congressional offices concerning our position on this issue.

Because of our concerns that our position has been, and could continue to be, misrepresented to so many Congressional offices—and because we feel it is imperative that the cruelties in dog racing be brought to your attention—we are here today to ask you to insure that dog racing not be allowed on Indian lands.

On behalf of our members, we are requesting that any bill passed by the Committee on this subject contain a provision specifically prohibiting pari-mutuel dog racing on Indian lands.

Racing dogs are trained in an event known as "coursing," in which young greyhounds are released to chase down a live jackrabbit within a fenced enclosed field. Once caught, the quarry is usually mutilated by the dogs and left to die from its injuries. So that young dogs do not get discouraged, some trainers will break one of the rabbit's legs so that it can more easily be caught. Some trainers, who have a dog which will not chase a rabbit by instinct during the coursing event, will confine the dog with a live rabbit and deprive the dog of food until the dog either kills the rabbit or faces starvation.

The next phase of training for many dogs is the "whirl-a-gig" which is a pole upon which a small live animal is suspended. This time the bait may be a domestic rabbit, guinea pig, chicken, or even a kitten. The pole moves around a circular track. This teaches the dog to run in a circular path in chase of the dangling animal and somewhat simulates a racetrack situation. As an incentive for dogs to chase the whirl-a-gig, they are eventually allowed to catch-up and attack the live animal bait. If the lure is still alive after the dogs catch and maim it, the small animal will be used again on a new set of dogs.

The next major phase of training takes place at a schooling or training track which resembles a real racetrack. Again, the bait is a small live animal which dangles from a mechanical arm, which whirls around the track with the dogs in pursuit. The dogs are allowed to catch and attack the live animal which is tied to the mechanical arm. This same live lure is often used repeatedly on different sets of dogs, no matter how badly injured it might be from the previous mauling. These training methods result in approximately 100,000 animals per year suffering the trauma of being chased and eventually torn apart by the dogs.

Proponents of dog racing have claimed that such training practices are obsolete and that artificial training methods are now available. These proponents often point to a training film (promoting the use of the Jack-A-Lure, a mechanical bait) to encourage the discontinuation of jackrabbits and other animals being used for training purposes. Unfortunately this film, as well as other efforts, has not had any significant impact on changing the more traditional and more desired method of using live animals to train racing greyhounds, a method practiced by 90 percent of greyhound trainers.

The current practice of using live animals as bait in the training of racing greyhounds has been verified by state racing officials, industry leaders, industry participants, and countless media exposes, including ABC's 20/20. In addition, I cite the following evidence:

a. According to a "Senate Staff Analysis and Economic Impact Statement" for the State of Florida (issued April 29, 1980), a spokesman for the Florida Greyhound Association said that 100% of the Florida trainers use live bait for training.

b. Mr. Troy Stiles, a member of the executive committee of the National Greyhound Association (NGA) confirmed this practice in an interview with the *Charleston Daily Mail*, Charleston, West Virginia, on June 29, 1983: "An official with the National Greyhound Association acknowledged that the majority of dogs used for racing are trained with live animal lures . . . Troy Stiles, vice-president of the National Greyhound Association, says his organization is encouraging trainers to switch to artificial lures. But he estimates that only 7 or 8 percent use the mechanical device exclusively."

c. Mr. Art Tiggett, Supervisor of Greyhound Racing for the State of Florida's Division of Pari-Mutuel Wagering, informed an HSUS investigator during a visit with him at his office in Miami on July 7, 1983, that all the greyhounds trained in Florida are trained on live lures, specifically rabbits, chickens, and guinea pigs. Mr. Tiggett stated that he and investigators from the Florida Division of Pari-Mutuel Wagering have visited several training tracks in Florida and discovered evidence that they were using live lures.

d. On May 17, 1984, The St. Petersburg *Evening Independent* reported that dogs which had already been trained and were actively racing at Florida tracks were being taken off the track and re-trained on live lures, a practice called "shaking up." According to the *Evening Independent*, Robert Corder, former chief investigator for Florida's Division of Pari-Mutuel Wagering, "and several investigators documented numerous incidents of trainers taking dogs from Sanford-Orlando Kennel Club racetrack to Ryan's unlicensed training track five miles away . . . . Corder said he confronted one of the trainers who admitted shaking up his dogs. He said Ryan then came to the racetrack and admitted shaking up dogs."

e. The greatest evidence that live lures are still being used in great quantities is the fact that whenever legislation is introduced to prohibit the use of live lures in states where greyhound training is prevalent (such as Texas, Kansas, and Florida) and even at the federal level, greyhound trainers vigorously oppose and lobby against such legislation. A bill which would specifically prohibit the use of live lures in the training of greyhounds was introduced in Florida every year from 1974 through 1981. Each year the bill was strongly opposed by Florida greyhound organizations. The bill was finally passed in 1981 despite the opposition of Florida trainers. The St. Petersburg *Evening Independent* (5/17/84) reports, "Over the objection of trainers, Florida's Legislature in 1981 passed an animal cruelty law that limits the use of rabbits in training greyhounds." This bill passed, however, only after the humane societies compromised by giving the trainers three years to adapt to different training methods. Due to this compromise the bill did not become law until July 1, 1984.

However, a very narrow definition of "animal" in this law has rendered it functionally useless. In fact, Mr. Michael LaBarbera, an attorney representing greyhound trainers, filed suit recently to seek a declaratory judgment to have the law declared ineffective. In his complaint Mr. LaBarbera states that, "The Plaintiff along with the vast majority of other individuals and firms in the same business, utilize live jack-rabbits in the training of the greyhounds for racing on Florida's licensed para-mutuel racetracks and other licensed tracks throughout the country" (our emphasis added). This suit also states that, "The Plaintiff's livelihood is in question should he be forbidden from using said jackrabbits to train the greyhounds as the use thereof is the most effective method of training greyhounds for use on licensed paramutuel race tracks."

f. On July 13, 1984, 40 greyhound trainers protested a proposed rule of the Florida Game & Fresh Water Fish Commission which would ban the importation of jackrabbits into the State of Florida. The greyhound trainers argued that jackrabbits were necessary to train their greyhounds and were "crucial to their livelihood." The Florida Game & Fresh Water Fish Commission subsequently postponed adoption of its proposed rule. In addition, the fact that the National Greyhound Association and the American Greyhound Track Operators Association refuse to support legislation to specifically prohibit the use of live lures in training (especially in states where training is prevalent) is further evidence that this practice is still common.

g. In the February, 1985 issue of *Turnout* (a prominent greyhound industry publication), the editor, in response to accusations by The HSUS that greyhound racing—due to its use of live lures—is a blood sport, states, "Alas, if only what they've been saying wasn't true."

From the above evidence, it is obvious that dog racing as it exists today is nothing other than a "blood sport" since greyhounds in training are allowed to attack and viciously kill other animals. The major difference between greyhound racing and dog- and cockfighting is that this "blooding" is behind the scenes. Congress addressed animal fighting ventures in 1976 when it amended the federal Animal Welfare Act to prohibit the transportation of animals across state lines for fighting purposes. The HSUS does not believe that the federal government should now condone, much less encourage, a similar blood sport such as dog racing on federal Indian Trust lands. Even in the greyhound industry itself, there are a few who admit to this fact. In a column appearing in The Greyhound Review (November 1981) Greg Farley writes: "No one is buying the 'Goody Two Shoes' image we have been trying to sell to the public. We are fooling no one with our phony propaganda about how well we treat our animals, and we would do well to stop trying. Nobody likes a hypocrite. The fact is that greyhound racing is considered a dirty word by the general public, ranked just behind bullfighting and cockfighting, right where it belongs. It's a miracle that humane societies all over the country aren't picketing our tracks every night of the week. But that day may yet be coming."

These training activities are impossible for the Indian reservations to regulate since most greyhounds are bred and trained in the Midwest and then shipped to racetracks throughout the country when training is completed. In fact, thirteen of the fourteen dog racing states obtain an overwhelming majority of their dogs from out of state. Similarly, Indian reservations will also have to obtain racing dogs from outside the reservation to fill their racing programs. No matter how stringently a regulation is written by an Indian reservation, it can not prevent dogs from being trained in other states on live lures and then being brought onto the reservation for racing purposes.

The animals used as live lures are not the only victims of dog racing. Equally as disturbing is the unconscionably high percentage of greyhounds killed when they fail to be economically productive. The majority of greyhound dogs for racing don't prove to be fast enough and thus are destroyed before they ever see a pari-mutuel racetrack.

Even those dogs which reach the pari-mutuel tracks are constantly being graded out and very few are successful enough to still be racing at the age of four. Estimates derived from interviews with track veterinarians, state veterinarians, racing officials, industry leaders, and a review of statistics at several tracks reveal that probably close to 90 percent of greyhound racing dogs are destroyed by the age of four. The survival of any racing greyhound is predicated upon money—the greater a dog's earnings during its career, the greater likelihood that the dog will be allowed to live and will be used for breeding. But since few dogs are needed for breeding—greyhound bitches throw large litters of up to ten pups twice a year—only a select few are saved for breeding. As long as the culling process continues and the demand for winners is the primary motivation for breeding and raising greyhounds, it is obvious that killing thousands and thousands of greyhounds every year is an inherent part of dog racing. The HSUS estimates this number to be somewhere between 30,000 and 50,000 dogs annually.[1]

Another tragedy which accompanies this mass destruction of animals, is the manner in which the greyhounds are destroyed. At the breeding farms and training tracks the dogs are usually shot to death, since it is cheaper than paying a veterinarian to humanely inject a lethal dose of a barbituate. According to the Pittsburgh Press (5/13/83), "Some unscrupulous trainers have been known to set them [failing greyhounds] loose on Western prairies where coyotes prey on the dogs and migrant farm workers kill them for food." Even those dogs which fail to race successfully at the racetrack are often removed from the premises of the track and shot. In order to eliminate the problems of inhumane destruction of dogs the track veterinarian at Plainfield Greyhound Park in Connecticut agreed to euthanize any animal on a per cost basis of $15.00 which includes disposing of the carcass; however he conceded that the vast majority of trainers still chose to dispose of the dogs themselves.

One indication of the number of dogs which are destroyed, even after reaching the track, is evident from the records kept by the track veterinarian at Plainfield Greyhound Park. The track veterinarian's records reflect that one kennel operator in the twelve month period (August 1, 1982 through July 31, 1983) brought 94 dogs to him for destruction. This kennel operator is only one of 18 kennel operators at this particular track and one of the few that brings all his dogs to the track vet for euthanasia. If you multiply these 94 dogs by 18, the number of kennel operators at the track, and take into consideration that there are normally 1000-1200 dogs housed at Plainfield at any one time, it becomes quite evident that there is a large turnover of racing stock and there exists a mass killing of greyhounds—and *these* were the dogs fast enough to at least "make it" to the racetrack.

Unfortunately, this wholesale and often inhumane destruction of dogs is foisted upon the public by the dog racing industry as being acceptable behavior. According to humanitarian Hugh Geoghegan: "By virtue of having become linked to dog racing, the greyhound has assumed the same social status and public regard as those people who make up the world of dog racing. Despite centuries of association with royality as companion and hunting dog, the greyhound in America is publicly regarded as a 'racing dog' . . . Worst of all, in regard to ethical and legal/humane standing, the greyhound as a breed has become the jurisidictional property of the racing world. The least questioning of acts and practices that would be regarded as criminal and outrageous, were they inflicted on any other breed of dog, is quickly and angrily repulsed by track owners and dogmen alike, who insist that what is done to greyhounds is both appropriate and normal . . . The greyhound racing world has falsely propagated the view that the greyhound is 'not like other dogs' and that his breed's present position as a ploy for the gambling world is his rightful one. Were countless thousands of golden retrievers, for example, to be systematically killed each year by the gambling world, there would be a huge public outcry."

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[1] It is difficult, if not impossible, to know exactly how many racing greyhounds there are in any one state at any one time. However, a modern greyhound track running evening cards and matinees with 12 to 14 runs on each card would have to have access to 700 to 1,000 greyhounds that were on a active first-string roster. It is estimated that there are now at least 40,000 "active" greyhounds racing in the United States. If we take the percentage of 25 percent put forth by the industry as accurately reflecting the number of dogs lost from the active list each year due to injury, sickness, and old age, then about 10,000 new greyhounds must reach the track each year. The actual figure is probably a bit higher. Nonetheless, those 10,000 greyhounds are only those that actually made the track and constitute the 20 to 40 percent survival rate generally acknowledged for those actually reaching the track. Thus, somewhere between 30,000 and 50,000 greyhounds a year must be bred to produce the roughly 10,000 who will eventually make the track. The other 20,000 to 40,000 of these will be killed, in addition to the approximately 10,000 annually who have outlived their racing usefulness as well as those that are killed or die because of injuries or sickness during their racing years.

No doubt, proponents of dog racing will tell you about programs designed to place into good homes greyhounds which are no longer able to race. While an adoption program might sound good on surface, such a program would not solve this problem. First, it would do nothing to find homes for the dogs that are destroyed before they even reach the racetrack. Over 50 percent of all greyhounds bred for racing don't make it to the racetrack since slow ones are culled out during training. Secondly, the adoption program could not begin to handle the number of dogs eliminated from racing each year at the track. Based on statistics from existing tracks, this amounts to over 10,000 dogs a year nationwide. And in its entire history, REGAP, a national greyhound adoption program, has to date only placed slightly over 600 greyhounds nationwide.

While such an adoption program might provide good public relations value for the proponents of dog racing, such a plan could only place relatively few of the dogs available for adoption. Animal shelters throughout the United States, for example, are unable to find homes for approximately 80 percent of the animals in their care despite tremendous effort to attract potential adoptors. There simply aren't enough good homes available for the millions of excess, non-racing dogs born every year.

Approximately 30,000 to 50,000 greyhounds are destroyed annually. Yet REGAP only provided homes for 600 dogs—an minute percentage of excess greyhounds. An article in January, 1985 *Turnout* admits, "We know that far too many greyhounds are being put down in proportion to the number that are being placed" and that too many owners are under the "mistaken impression that . . . REGAP can find homes for all their greyhounds."

Another abuse inherent in dog racing is the high percentage of dogs sustaining injuries during racing. Because of the close bunching of the dogs at the start of the race and the sharpness of the turns on the tracks, there are numerous instances of bumping around the first turn, resulting in spills which can cause a multitude of injuries, including fractured bones. Another common injury to racing dogs are fractured right hocks (tarsal joints). Since the dogs race counterclockwise, they exert a tremendous amount of pressure on their right hock which they use to push off in negotiating turns.

Leg and joint fractures are common due to the considerable amount of weight (55–75 pounds) and the tremendous amount of force generated by these dogs when racing at 35–40 mph, all of which is supported on extremely thin and fragile legs. Other common injuries are broken toes and pad abrasions from incessant racing on sand surfaces. According to the journal of Veterinary Medicine/Small Animal Clinician (August, 1983), "Racing greyhounds are prone to a plethora of injuries including skin lacerations, 'dropped' and torn muscles, ruptured tendon sheaths, and fractured bones." Once on the racetrack any greyhound which sustains any injury that permanently impairs its running ability will be killed, unless that dog has potential value as a breeder. Dogs with less severe injuries are even less fortunate since they are forced to continue racing, despite painful ailments.

Dr. Edwin Williams, State Veterinarian for the Connecticut Division of Special Revenue, the state regulatory agency for greyhound racing, stated during a conversation on June 23, 1983, that the typical injury for racing greyhounds is pad abrasions from constant racing—twice a week, all year round. He stated that severe ligament sprains are typical injuries and the other most frequent injuries are leg fractures from spills. Estimates derived from statistics kept by the track veterinarian at Plainfield Greyhound Park indicated that approximately 160 dogs had to be destroyed due to the severity of their racing injuries during a twelve-month period (August 1, 1982–July 31, 1983) at this one racetrack.

Another disturbing aspect of this sport is the fact that racing greyhounds live virtually their entire lives in small crates. Some are even kept constantly muzzled except for the few moments when they are fed. The dogs are usually caged at approximately 6–8 months of age when they begin their formal training and spend the rest of their lives in close confinement. They are seldom taken away from the track for a few months each year and "turned-out" as is done with racehorses. Instead, racing greyhounds are raced all year round for their entire career and spend the majority of their existence in small crates. The back thighs of a large number of racing dogs are worn bare and a few even develop sores on their thighs from lying in these cages for such extended periods of time.

The animal exploitation exhibited by the cruelties prevalent in dog racing is not justified by Indian reservations' need for additional revenue. When one considers the detrimental impact caused by the criminal and social problems resulting from gambling activities, it is very doubtful that pari-mutuel dog racing would serve to the economic benefit of Native Americans. The proponents of dog racing contend that this "sport" will give economic relief to some of the impoverished areas on Indian reservations. However, the introduction of pari-mutuel gambling in such impoverished areas is self-destructive and would result in both human and animal suffering.

The fact that pari-mutuel wagering preys on the poor is evident by the fact that a pari-mutuel tax is a form of regressive taxation, since the people with the least amount of money wager a higher percentage of their income on legalized gambling. A study conducted by the University of Michigan reported that "The disposition of low-income families to spend a greater fraction of income on gambling makes gambling a regressive expenditure and, where used as a source of revenue, government receipts from gambling become a regressive tax." The Final Report of the Commission on the Review of the National Policy Toward Gambling states, "Legislators have seen legalized gambling with its attendant revenue to State treasuries as a painless voluntary form of taxation that takes the place of increases in income taxes or sales taxes. In fact, legal gambling is a regressive form of taxation—that is, the poor pay out a greater proportion of their income for it than do the rich."

Unfortunately, some economically disadvantaged view pari-mutuel as a way to solve their financial problems, and it gives them a false sense of hope. Vince Santopietro, deputy executive director of the California Horse Racing Board was quoted in U.S. News & World Report (May 30, 1983) that "Historically, people are more willing to gamble when times are hard." An article on the dog racing industry in Alabama appearing in Rural America (February, 1980) reported, "A good portion of the county's new-found millions is being paid out by those whom the money is intended to benefit—the poor and the jobless who are gambling away welfare and unemployment checks in hopes of striking it rich overnight." Thus pari-mutuel taxation is not a new source of revenue but merely a way of shifting taxes onto the poor, which ultimately hurts the entire community since welfare payments and public assistance have to be increased.

The Wall Street Journal (July 16, 1980) in an article titled, "Racetracks Thriving In Industrial Areas Because Of—Not Despite—Unemployment" reports, "Many tracks in the U.S. and Canada are reporting dismal attendance due to the recession. But tracks in industrial areas hardest hit by the economic slowdown are generally holding their own or showing big attendance gains. Unemployment appears to be the main reason for the higher attendance. Being out of work seems to spur some people to take big risks despite their precarious financial condition."

An equally disturbing effect that pari-mutuel gambling has on society was exposed by M. Lee Smith in "Capital Commentary" (Nashville, Tennessee, 3/22/85), who reported that in Memphis the number of fathers defaulting on child support increases during the dog racing season in the area.

It must also be emphasized that, contrary to popular opinion, legalized gambling increases illegal gambling, and does *not* decrease it. A Study by the University of Michigan revealed that, "Participation in legal gambling activity is associated with higher illegal gambling participation . . . 38 percent of those who went to dog tracks bet illegally, which compares to 11 percent in the total population.

On February 16, 1983, Colonel Justin Dintino, Chief of Intelligence of the New Jersey State Police, testified before the Senate Judiciary Committee, "When you introduce gambling to an area which never had gambling before, you now develop a whole new group of individuals who start out with legal gambling, but some of those people turn to illegal gambling because they are being offered higher payments and there are no taxes that have to be paid."

Sean McWeeney, chief of the organized crime section, criminal investigative division of the Federal Bureau of Investigation, in an interview in January, 1984 confirmed this fact: "Legalized gambling does not reduce illegal gambling, but instead increases it. The major problem is credit. Legal gambling creates new gamblers who switch over to illegal gambling when their money is exhausted." William Webster, Director, Federal Bureau of Investigation, in an interview with the American Legion Magazine (January, 1985) warns, "So I really don't see how one can expect to run legalized gambling anywhere without serious problems . . . Any time organized crime sees an opportunity to put a fix on something, to get an edge on something it'll be there. And gambling is still the largest source of revenue for organized crime.

Even within the dog racing industry, some recognize the fallacy of promoting legalized gambling as a new and productive industry with no serious social problems. According to Mr. Ed Souza, columnist for the greyhound industry publication The Greyhound Review, writing to oppose expansion of gambling activities in Florida (March, 1985), "It would be much better if our Florida legislators would concentrate on bringing more clean industries into our state (electronics, etc.)."

Thus in our view, pari-mutuel gambling on dog racing on Indian reservations would not only cause the abuse of animals, but also would result in the exploitation of Native Americans to satisfy the greed of a few outsiders. It is for these reasons that The HSUS strongly recommmends that S. 902 be amended to prohibit pari-mutuel gambling on dog racing on federal Indian Trust lands.

The HSUS has been sucessfully fighting the further legislation of dog racing because of the many cruelties inherent in this "sport." It is ironic that, because of our success in defeating the legalization of this activity, promoters of dog racing have now discovered the potential benefits of racing on Indian lands.

Dog-racing investors view Indian land as a means of circumventing state laws and of by-passing state procedures for regulating the sport.

Our main concern is animal abuse, but we would also like to express concern that proper provisions are not in place for such measures as rehabilitating compulsive gamblers, keeping organized crime out, and handling the resultant social problems.

I thank you for granting our organization the opportunity to testify here today and for giving this important humane matter your thoughtful consideration.

THE HUMANE SOCIETY OF THE UNITED STATES

DOG RACING FACT SHEET

1. WHY WOULD ANYONE OBJECT TO ORGANIZED DOG RACING?

Because dog racing results in the unjustified exploitation and subsequent abuse of thousands of animals every year. The animals abused are not only the dogs which are treated merely as "racing machines," but also the untold number of innocent animals used as training bait for the racing greyhounds.

2. WHAT KIND OF ABUSES DO THE RACING DOGS ENCOUNTER?

One of the most serious abuses is the countless number of dogs that are produced only to be destroyed. The majority of the greyhounds raised for racing each year do not exhibit enough racing potential to be successful at the race track and over 50% are killed before they even reach the tracks. Very few live to the age of four since even dogs that race successfully are destroyed to save feed costs when they stop earning money. In effect, the dogs literally "run for their lives."

Because so many dogs have to be killed (approximately 30,000-50,000 per year), unprofessional and often inhumane methods are used to dispense of the dogs to save costs, such as having them shot, abandoned, or sent to be used in research. In addition, racing greyhounds are subject to a plethora of painful racing injuries which they must endure during their entire career.

3. ARE DOGS THE ONLY ANIMALS ABUSED?

No. In order to encourage the dogs to race after mechanical lures used on the racetrack, most dogs are trained by having them chase "live" lures. The dogs are allowed to catch up with the live bait and rip the small animals to pieces in order to develop a lust for blood. Over 90% of greyhound trainers believe the use of live lures is necessary to teach their dogs to chase the mechanical lure during a race. Rabbits are the most commonly used "live" bait, but investigators have discovered that chickens, guinea pigs, and even kittens have been used on occasion. This training method results in approximately 100,000 animals per year suffering the trauma of being chased and caught by the dogs. They are often used repeatedly until ripped apart by the dogs or else tossed onto a pile to die.

4. WHY WOULD A STATE LEGALIZE SUCH CRUELTY?

Because many perceive organized racing as a way to raise needed revenue, they are turning toward racing during this time of budgetary crisis, initially unaware of the cruelty involved.

5. COULD DOG RACING EVER BE HUMANE?

Ideally, it is possible to minimize the cruelties in dog racing with the first step towards this goal being the training of dogs with artificial lures instead of live animals. Unfortunately, from a practical standpoint, this change in training method seems unlikely since greyhound trainers believe it is imperative for racing dogs to develop a lust for blood to be successful racers. They adamantly refuse to use artificial lures even though it has been proven that dogs trained with artificial lures race just as well as dogs trained with live bait.

Dogs that have to be killed because they are no longer useful for racing could be euthanized humanely by qualified personnel if the owners were willing to spend the money for such service. However, the sport will always require that dogs be bred in large quantities in the hopes of producing a few good runners. And since few dogs can find good homes after a racing career, their lives will be short and usually unpleasant due to their exploitation by owners and trainers in order to make a "buck." This hardly justifies the sport's existence.

6. WHO OVERSEES THE RACING INDUSTRY?

Racing commissions exist in each state to regulate the industry. However, the main duty and function of state racing commissions is to generate revenue for the state. Therefore, if a conflict of interest exists between revenues and the welfare of animals, the animals are always the losers since the state has a vested interest in making sure the industry not only survives but prospers, regardless of animal suffering.

7. IS IT POSSIBLE FOR LEGISLATION THAT SEEKS TO LEGALIZE DOG RACING TO BE WRITTEN IN SUCH A WAY AS TO ELIMINATE THE CRUELTY INVOLVED IN THE SPORT?

No. While one state attempted to do so, it failed in its objective because the majority of greyhound racing dogs are trained outside of the states in which they race. It serves little purpose to prohibit the use of live lures by state law if the dogs are trained in other states, such as Texas or Kansas, and then brought into your state to race. Similarly, any laws requiring humane euthanasia for racing greyhounds at the racetrack are of no help to the majority of dogs that don't make it to the track and are disposed of in the state where they were bred and trained. Even the dogs at the racetrack are usually removed from the track grounds for destruction purposes and thus avoid any regulations pertaining to euthanasia established by state racing commissions.

8. ISN'T THE REVENUE RAISED FOR THE STATE SUFFICIENT JUSTIFICATION FOR THE CRUELTY?

The amount of money generated by greyhound racing towards the general state tax fund might appear substantial on surface, but compared to the states' total budget, this amount is infinitesimal. The average amount of greyhound racing revenue reported by the states is less than three-tenths of one percent of the states' budget. The state of Florida, which has 17 of the 45 pari-mutuel greyhound racing tracks in the country, generates only .7% of its revenue from dog racing. It should also be emphasized that pari-mutuel tax revenue is a regressive form of taxation and is merely a redistribution of the sources of a state's income, since money not spent at the track would probably be spent on consumable goods upon which there is a state sales tax. The money spent on other consumable goods or services would also generate jobs; thus, pari-mutuel racing contributes little to the economic welfare of a community. And, of course, no amount of money is ever sufficient justification for cruelty to animals.

9. SHOULD ALL DOG RACING BE ABOLISHED?

At the present time, all dog racing has inherent cruelties which should not be condoned. Dog racing as it exists today is nothing other than a "blood sport" since greyhounds in training are allowed to attack and viciously kill other animals. For these reasons, dog racing should not be tolerated in a civilized society.

15 STATES WHERE DOG RACING IS ALREADY LEGAL:

Alabama
Arizona
Arkansas
Colorado
Connecticut
Florida
Iowa
Massachusetts
Nevada
New Hampshire
Oregon
Rhode Island
South Dakota
Vermont
West Virginia

1985

The Humane Society of the United States, 2100 L Street, NW, Washington, DC 20037

PARI-MUTUEL GAMBLING AND ORGANIZED CRIME

Below are quotes from various officials knowledgeable about legalized gambling and its relationship with organized crime:

1. William Webster, Director, Federal Bureau of Investigation (The American Legion Magazine, January, 1985, pp. 10-12.)

   Q: How do you feel about legalized gambling. Is that a factor in encouraging crime?
   A: Well, in my position, I hesitate to take moral positions on legislative issues. But I pointed out at the time that Atlantic City was going into casinos that we knew of no situation in which legalized gambling was in place where we did not eventually have organized crime. Crime doesn't always show up in the same way. In Atlantic City organized crime influence is coming through the control of goods and services. It's different from the "skimming" we've seen in Las Vegas. We're also seeing evidence of corruption as organized crime tries to reach the gaming commission through other state officials.

   So I really don't see how one can expect to run legalized gambling anywhere without serious problems--fraudulent tickets, counterfeit lottery processes. Any time organized crime sees an opportunity to put a fix on something, to get an edge on something, it'll be there. And gambling is still the largest source of revenue for organized crime.

2. Austin McGuigan, Chief State's Attorney, State of Connecticut. (Information presented by Mr. McGuigan during a conference in Washington, D.C., September, 1984 and a conference in Fort Worth, Texas, March, 1985)

   > In many places in the Northeast, organized crime has quit accepting bets on pari-mutuel racing. So much race fixing was going on that organized crime became leary of handling racing action. Organized crime instead is involved in fixing the races, ownership of tracks and peripheral industries, horse ownership and other parts of the industry.
   >
   > **The State of Connecticut should put a disclaimer on every pari-mutuel facility in bold letters saying, "These games are in all probability fixed. Bet at your own risk."**
   >
   > There is no major bookmaking operation in the United States which operates without organized crime. Organized crime connections are needed to handle betting "layoffs" and to insure collection of losses incurred by bettors.

3. Sean McWeeney, chief of the organized crime section, criminal investigative division, Federal Bureau of Investigation (Interview with Larry Braidfoot, Christian Life Commission, Nashville, Tennessee, January, 1984).

   > "Legalized gambling does not reduce illegal gambling, but instead increases it. The major problem is credit. Legal gambling creates new gamblers who switch over to illegal gambling when their money is exhausted."
   >
   > "Those who go overboard in their betting are likely to wind up getting involved with loan sharks. Only then, when they are unable to pay the exorbitant fees, do they run into the violent aspect of organized crime."

4. Colonel Justin Dintino, Chief of Intelligence, New Jersey State Police (Testimony before U.S. Senate Judiciary Committee, February 16, 1983, concerning Committee's investigation of organized crime).

   SENATOR THURMOND: "In other words, you are saying that when you legalize gambling, it has increased other gambling. Is that right?"

   COL. DINTINO: "Yes, in other words, when you introduce gambling to an area where they never had gambling before, you now develop a new group of individuals who start to gamble. Now, as a result of that, they may initially start out with legal gambling, but some of those people turn to illegal gambling because they are being offered higher payments and there are no taxes that have to be paid."

5. Charles Morin, former chairman of the Commission on the Review of the National Policy Toward Gambling (Fifth Annual Gaming Conference, 1983, Philadelphia, Laventhol & Horwath, p. 53.)

   "Does legalization encourage or discourage illegal gambling? The conclusion was that where gambling was legal, it did increase the incidence of illegal gambling."

6. James B. Adams, Director, Texas Department of Public Safety. (Letter to The Honorable John Leedom, State Senator in Texas, February 12, 1985)

   "Secondly, legal betting cannot compete with illegal betting because of certain advantages to the illicit bettor. Availability of credit, better odds which are often available, and obvious tax advantages (bookies do not report customers winnings) combine to make illegal gambling much more attractive. Legalized pari-mutuel betting would lead to a marked increase in illegal gambling activity as the ranks of bettors increase."

   "The connection between gambling and organized crime is another factor which we cannot ignore. This relationship is obvious when you list the states where major organized crime families and activities have located---New York, New Jersey, Pennsylvania, Illinois, Nevada, California, and Louisiana. All of these states have legalized gambling activities. Legalizing pari-mutuel betting in this state would provide organized crime with a substantial profit-making opportunity that would be hard to ignore."

7. Survey Of American Gambling Attitudes And Behavior, Survey Research Center, Institute for Social Research, The University of Michigan, Ann Arbor, Michigan, 1976.

   "Participation in legal gambling activity is associated with higher illegal gambling participation...38 percent of those who went to dog tracks, bet illegally which compares to 11 percent in the total population."

PARI-MUTUEL GAMBLING & SOCIOECONOMIC FACTORS

Below are quotes from various officials, recognized authorities, and research studies concerning legalized gambling and its attendant socioeconomic problems.

1. Final Report of the Commission on The Review of The National Policy Toward Gambling (Washington, DC, 1976)

> "Legislators have sometimes seen legalized gambling with its attendant revenue to State treasuries as a painless, voluntary form of taxation that takes the place of increases in income taxes or sales taxes. In fact, legal gambling is a regressive form of taxation--that is, the poor pay out a greater proportion of their income for it than the rich--while income taxes, at least, are progressive. It is also true that it is cheaper to collect income and sales taxes than it is to collect income from legal gambling games."

2. Charles Morin, former chairman of the Congressional Commission on the Review of the National Policy Toward Gambling (Fifth Annual Gaming Conference, 1983, Philadelphia, Laventhol & Horwath).

> "Does legalized gaming offer a major source of government funding? We concluded that it is not significant in relation to the budget in almost any state. I think we would conclude the same today."
>
> "Is taxation of gaming particularly regressive? We found that it is, primarily because the survey showed that most gaming was done by the lower and lower-middle classes and that the taxation of those proceeds, if any, was regressive in nature."
>
> "Would legalization of gaming lead to a substantial increase in the number of compulsive gamblers? According to the evidence presented in the survey, the answer was a resounding yes."

3. Gerald T. Fulcher, director/counselor, Delaware Council on Gambling Problems (Testimony before Texas Legislature, 1983).

> "Increases in instances of compulsive gambling have been directly linked to legalized gambling undertakings...10% of 'regular' gamblers are likely to become compulsive gamblers."
>
> "Compulsive gambling costs states additional monies:
>
> 1. treatment
> 2. 86% of compulsive gamblers commit felony crimes
> 3. more than 17% of wife abuse cases, and more than 13% of child abuse cases are directly related to compulsive gamblers
> 4. compulsive gamblers steal an average of $44,000 during the time of their behavioral disorder."

4. Survey of American Gambling Attitudes And Behavior by Survey Research Center, Institute for Social Research, The University of Michigan, Ann Arbor, Michigan, 1976)

> "The disposition of low-income families to spend a greater fraction of income on gambling makes gambling a regressive expenditure and, where used as a source of revenue, government receipts from gambling become a regressive tax."

. Gambling In Connecticut, a research report by Department of Sociology, University of Connecticut, Storrs, CT., Nov., 1977.

> Disclosed more betting on welfare days at pari-mutuel gambling facilities and, "Wherever betting is occuring there will be some pathetic vignettes of people who become distraught and desperate as they continue to lose. What is noteworthy is the marked increase of such occurences on Friday nights that correspond with 'welfare Fridays'."

6. "Capitol Commentary" by M. Lee Smith, Nashville, Tennessee, March 20, 1985.

> "Revenue from racetrack gambling is one of the most regressive and unfair forms of taxation, falling disproportionately on those least able to afford it."
>
> "And that has a ricochet effect throughout society--exemplified by the fact that in Memphis the number of fathers defaulting on child support increases when the dog racing season starts in West Memphis."

7. Vince Santopietro, deputy executive director, California Horse Racing Board (U.S. News & World Report, May 30, 1983).

> "Historically, people are more willing to gamble when times are hard."

8. "Boom for County is Bust for Poor, "Rural America Magazine, February, 1980.

> "A good portion of the county's new-found millions is being paid out by those whom the money is intended to benefit--the poor and the jobless who are gambling away welfare and unemployment checks in hopes of striking it rich overnight."

9. "Racetracks Thriving in Industrial Areas Because of--Not Despite--Unemployment, "Wall Street Journal, July 16, 1980.

> "Many tracks in the U.S. and Canada are reporting dismal attendance due to the recession. But tracks in industrial areas hardest hit by the economic slowdown are generally holding their own or showing big attendance gains."
>
> "Unemployment appears to be the main reason for the higher attendance. Being out of work seems to spur some people to take big risks despite their precarious financial condition."

10. Gambling In Connecticut, a research report by Department of Sociology, University of Connecticut, Storrs, CT., Nov. 1977.

> Interviews with tellers who worked at a pari-mutuel dog racing track revealed that, "Dealing with people, day after day, who they believed could not afford to be betting so heavily, took a psychological toll on many of the tellers. Some described the dog track's operation as 'legal, but immoral...a majority of them viewed most patrons as betting over their heads--depriving their families, betting borrowed money, stealing to bet, etc."

Mr. **Taylor**. Thank you very much.

I don't believe there are any further witnesses. We have none scheduled.

This hearing will stand adjourned.

[Whereupon, at 3:57 p.m., the hearing was recessed to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

TESTIMONY OF JOHN L.A. BOND

BEFORE

THE UNITED STATES SENATE SELECT COMMITTEE

ON INDIAN AFFAIRS

Members of the Committee, my name is John L.A. Bond and I come here today wearing two hats. First, I am in the business of operating and managing Indian Bingo Games on behalf of two tribes - the Winnebago Tribe of Nebraska and the Tesuque Pueblo Tribe of New Mexico. I am also an Indian by virtue of being adopted into the Winnebago Tribe of Nebraska. I come before you today to speak in opposition to Senate Bill 902 because I feel that the adoption of this Act, in its present form, would serve as the death nail to any future Indian Bingo Games being established on any reservation anywhere in this Country.

Let me tell you how I reached that conclusion. First of all, I am an attorney, admitted to practice in the State of New York, and have been actively engaged in real estate development in Fort Lauderdale, Florida for the past 10 years. I have been fortunate to accumulate a personal statement somewhere in excess of 20 million dollars, so I am a businessman first and foremost. I never have been nor ever will be associated with anybody relating to organized crime. My business and my business ventures have all been open, above board, and legal, legitimate enterprises. But I also feel I have a knack for finding the benefit in various opportunities and in making a dollar. That is the basis for my involvement in Indian Bingo; it was an idea which, when proposed to me as a potential avenue for investment of my capital, it made sense. And I would submit to you that the various contract management companies around the Country have gotten involved in Indian Bingo for exactly the same reason.

It is an opportunity to number one - make money; number two - provide an opportunity for the economically disadvantaged Indian tribes to also make money and generate revenues for tribal programs and to further tribal self-government; and, three - it helps to enhance the President's initiative that the private sector should be involved in doing things that the Government cannot and should not do.

High Stakes Indian Bingo is really the first original concept provided by the private sector to really help the Indian tribes. The BIA's system of paternal benevolence toward the Indians has not succeeded in providing the Indians with any degree of independence, self-esteem, and self-reliance. Nor have private sector individuals rushed in to help establish manufacturing plants, jobs, training facilities or anything else for the Indian tribes on reservations in this Country. It is almost a national disgrace to have allowed conditions to exist on Indian reservations in this Country for as long as we have. And now along comes something that the Indians can directly benefit from in a real and substantial economic way and the States have tried to prevent it, tax it out of existence and now the Federal Government is trying to do exactly the same thing.

Yes, there is a legitimate need for some kind of Federal oversight of Indian Bingo operations. Although I have not personally encountered such situations; I, too, have watched 20-20 and read somewhat slanted accounts in various publications about unsavory characters being involved in Indian Bingo and tribes being ripped off, receiving no economic benefit while contract managers are getting fat off of the protection provided by the reservation. But what this Bill does is assure that never again will a tribe be able to find someone like me willing to put up the monay, to take a chance that an Indian Bingo game is going to fly. Each one of these games has cost me or my company in excess of a million dollars to develop. Who is going to lend the Indians over a million dollars to develop the game and who is going to train them, provide technical assistance, expertise, and so on, to develop and operate the game and who is going to give them operating capital to pay out prizes, to pay employees, insurance, and so on until the game becomes a money-maker - which may not be for several years into its existence. Keep in mind, too, that because of the nature of the Federal Trust property constituting the bulk of the reservation, if not the entire reservation, lendors will have no opportunity to lien the property nor can the Indians give a mortgage on the property, nor can there be any encumbrance of any kind on the property. Under those circumstances, a lendor would be a completely unsecured creditor against the game - not the building, not the land, but against the game itself. There isn't a bank in this Country that will lend a million dollars to an Indian tribe under those circumstances.

Therefore, the only method available to the tribe in procuring funds to develop, build a bingo hall, stock it with equipment, pay for advertising, employees, insurance, operating capital, and so on has to come from the contract manager. The contract manager, as a rule, will lay out in excess of one million dollars to get a High Stakes Indian Bingo Game established. This Bill, particularly Section 7-B-2, provides that the management fee be permitted for the first two years of operation of the tribal game. The two year period is grossly inadequate insofar as it is impossible for a contract manager to be able to pull out his investment of over a million dollars within a two year period of time. Our standard management contract calls for a five year period with an option in the tribe to extend for an additional five year period; or, in the event of their desire to not exercise the option, for a reasonable buy-out provision. After five years, my company can see what kind of ability to pay the game will have generated after a five year operating period.

It takes a game of this nature at least a year to establish itself and may very well take its Indian employees over a year or two or more to get an understanding of how to operate and manage the game on their own effectively. I would submit to you that this two year period will prevent any reasonable businessman from entering into any contract to operate a game on any reservation. And, in addition, since Section 10 of the Bill provides that any existing game have one year from the time of enactment to comply with the requirements of this Legislation, this essentially impairs all the contracts that have already been entered into for the five year period with the five year options which would, in essence, provide that by the time this Bill is passed, what we have had is a two year run and the contract will, at that point, be void. I can tell you from personal experience in both Iowa and New Mexico that these games are not necessarily money-making machines. I have confidence that over the course of the long run, be it either five or ten years, that the games will indeed pay me out my costs and then some as well as provide substantial revenues to the tribe for their self-governments. But, as of right now, I can tell you that having had one game operating 8 months and one game operating 6 months, that these games are not yet paying for themselves and, in fact, I have had to commit an additional $150,000.00 to New Mexico and an additional $100,000 in operating capital to the Iowa game. And I ask you to reconsider the two year limitation and the two-year limitation on the 60/40 split. The 60/40 split has been standard in all my agreements and I think that might even be where the language in your Bill came from. That time period is simply too short to permit the initial start up of the game and the marketing, the advertising and the training - all those factors to permit a contract manager to recoup his investment and maybe even a slight profit on his money. No contract manager can enter into any contract for a duration of two years now or in the future in regard to these games. I feel that the two-year limitation is arbitrary, has no real basis in sound economic logic, and as a result, was far more restrictive than need be under the circumstances.

As stated in the General Intent of the Bill, there is a definite need for the Federal Government to take a look at the conduct of High Stakes Indian Bingo in Indian Country. There is a need for Federal Law to provide clear standards and regulations regarding High Stakes Indian Bingo because it is, indeed, gambling or a form of gambling; and, wherever there is gambling, there is a tendency to attract some of the more unsavory elements of our society. However, it is also the intent of Congress to promote tribal economic development, self-sufficiency, tribal governance and a degree of autonomy. In light of their economic conditions, in light of our budget constraints, and in light of the President's initiative towards more self-help than being dependent upon the Federal Government, if those are the real intentions of Congress, than the two year limitation needs to be amended. If, on the other hand, the unstated purpose of this Bill is to kill Indian Bingo now and in the future, then keep it the way it is because there is no doubt in my mind and in talking to several other of the contractors, that two years is too short a period of time in which to attempt to recoup the investment of this size and nature.

This Bill is so destructive of any investor by reason of the time limitation there is no doubt that its real function whether stated or not, is to destroy Indian Bingo--an absolute destruction of the game, excepting those which presently exist. It will clearly preclude any other game from coming on line. I state this categorically for, if you will check, I do not believe you will find more than a game or two which was not funded, managed and created by a contract manager investor. Thus, to pass a Bill which economically shuts out any contract investor, effectively shuts out any Indian Tribe from having a High Stakes Bingo Game.

This "shut out" in turn precludes the Tribe from fulfilling the economic needs of any governing body and leaves them in the position of total dependency upon the Federal Government -- a position diametrically opposed to that of the President in terms of self-sufficiency...it continues the Indian Tribe as a sucker at the public tit. It deprives the Tribe of one of the few opportunities it has had to gain economic self-sufficiency.

To say that other Tribes will come forward with the economic investment or the expertise to off-set the loss of non-Indian contract manager investors is to fly in the face of established fact --- and certainly, one must consider that epologue foretells prologue. There are very few instances in which any Indian Tribe has financially sponsored and managed another Indian Bingo Game and even in those instances, usually other non-Indian contract managers are involved.

If the problem be that of a fear of organized crime, ala the 20/20 sensationalism program, then why not direct the Bill directly to the problem rather than kill the goose that lays the golden egg.

These High Stake Indian Bingo Games have provided schools, health and many other public facilities as well as creating direct dividend distribution to the tribal members. These features and benefits can well be seen in a film prepared by the National Indian Gaming Task Force, a tape which is readily available to you if you wish to see it. This tape also presents both pro and con statements relating to the utilization of contract manager investors.

There is probably no question that as in all situations, a bad apple gets into every barrel; but this is certainly no reason to destroy the entire barrel. It is reason to seek out and destroy the bad apple.

There is no question that there are many groups seeking to destroy Indian Bingo for, in their judgment, it has or will hurt other charities. But is not the Indian as entitled to the derivation of this income for the social, economic and healthful well-being of the community as any other so-called charitable organization? Whatever the ulterior motivation might be, there can be little doubt that this bill, as proposed, will preclude other tribes from getting into Indian Bingo in the future for these other tribes certainly do not have the economic capability of funding their own games and, in addition, do not have the experience or background to run and operate such games, including not only the operation of the games but also the advertising, marketing and busing programs which are necessary elements thereof.

Thus, one might say, that this Bill will permit to continue the 90-odd games which presently exist throughout the United States and preclude any other tribe from ever again entering into Indian Bingo. In addition, it will wipe out those of the contract manager investors who presently exist, whether or not they have even recouped the investment which they have made, let alone a profit. Though the Congress has the right to abrogate the contracts relating to Indians as they are not afforded the protection of the Constitution in this area, it certainly does not bespeak well of the Congress to so act in this instance or in any instance where an Indian has entered into a contract to say that he is not afforded the rights and protections of any other citizen of the United States with respect to the contracts with which he has legitimately entered.

Hoopa Valley Business Council
P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd
Thursdays of each Month

VIA EXPRESS MAIL

June 20, 1985

Honorable Mark Andrews
Senate Select Committee on Indian Affairs
628 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Andrews:

The Hoopa Valley Business Council wishes to go on record with the following comments on proposed Bill S. 902 establishing Federal standards and regulations for the conduct of gaming activities within Indian Country.

The Hoopa Valley Business Council is the tribally elected governing body of the Hoopa Tribe of the Hoopa Valley Reservation, established by Executive Order in 1864. We are not a rancheria; rancherias were established in California for "homeless" Indians. The Hoopa Tribe has lived in this valley since time immemorial.

The Hoopa Valley Business Council has had a High Stakes Bingo operation on-going since April, 1985, with a well-thought out contract, reviewed by our attorneys with all the built-in safeguards for the Hupa Tribe.

Our contract is with the Six Rivers Bingo operation owned and operated by a Tribal member, with a limited partnership.

Sincerely,

Elsie G. Ricklefs, Chairman
Hoopa Valley Business Council

EGR/ib
Encls.

Following is the Hoopa Valley Tribe's comments on proposed bill S.902 to establish Federal standards and regulations for the conduct of gaming activities within Indian country, and for other purposes:

Page 3, lines 9-14
Definition of "Indian country" needs to be more explicit. Some ambiquity arises at the end of the paragraph where it states "or individual subject to a restriction by the United States against alienation".

Page 4, lines 5-6
The Tribe does not agree that the BIA should be involved in any way with the operations of bingo or approvals of bingo gaming on reservations. "Bingo" has nothing to do with "reservation resources" and therefore the BIA has no reason or right to be involved. Any uninvited involvement by the BIA would constitute an attack on Tribal sovereignty.

Page 5, lines 4-11
The Tribe strongly opposes anyone's right to limit or direct the uses of net bingo revenues. The use of such money must be the Tribal governments' responsibility without interference from any but the membership of the Tribes.

Page 5, lines 14-16
This section should be deleted as a case of overkill. It simply restates the intent of page 5, lines 1-3 from a different direction.

Page 5, lines 20-23
The Tribe fails to see the relevence of conforming to the state requirements as a minimum. Since Tribal governments are not sub-governments of their respective states, it would make just as little sense to require states to conform to the Tribal requirements as a minimum.

Page 6, lines 4-6
Again, the Tribe disputes the BIA's right to be involved in reservation bingo lacking Tribal invitation.

Page 6, lines 10-14
This paragraph states that the Tribes may receive not more than 49% percent of the net revenues of the bingo operations. Obviously, the intent was to limit the outside contractors' shares to a maximum of 49%, and not the Tribes' shares. In any event it is this Tribe's position that no one should limit Tribes' latitude in arranging for outside contracting, as

regards division of profits and most certainly, the Tribes' maximum share should not be restricted.

Page 6, lines 15-16
This Tribe would appreciate BIA involvement in reviewing contractor documents, but only at the Tribe's request.

Page 7, lines 17-18
Again, the Tribe rejects the concept of BIA control.

Page 8, lines 7-16
Since the Tribe opposes BIA control in this area, this whole section is considered unnecessary.

Page 9, lines 1-25 : Page 10, lines 1-25
This Tribe believes that Tribes already possess the right to organize Indian Gaming Commissions, at any level, and that all members of such commissions can be chosen solely through agreement by the involved Tribes and that they also possess the right to establish and approve the related governing documents.

Page 11, lines 1-17
Concerning assessments to fund bingo commissions; it occurs to us that if the BIA is to be given Indian bingo gaming approval and review authority, then it is the Federal government's responsibility to fund all aspects of the oversight operation, including any commissions authorized to act on the BIA's behalf.

Page 11, lines 18-22
Once again, the Tribe objects to uninvited BIA participation in Indian bingo affairs.

TESTIMONY BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

HEARING ON S.902 - WASHINGTON D.C.

Presented By:

SAC AND FOX TRIBE OF INDIANS OF OKLAHOMA

GAYLON R. FRANKLIN, SECOND CHIEF

Gaming in Indian Country has become such a vital source of income for Indian tribes that a realistic, objective scrutiny is a necessity. Expansion of tribal gaming operations since 1981, and the proposed increase in new operations have generated concern from local and state law enforcement agencies. The Sac and Fox Tribe of Oklahoma recognizes the need for regulation of gaming activities; in recognition of this need, the Tribe enacted a Bingo Ordinance on March 19, 1982. This ordinance provides for the licensing of all bingo games within the Tribe's jurisdiction, establishes requirements to obtain a license, defines reporting and procedural requirements and provides penalties for non-compliance.

We do not, therefore, object to the spirit of Senate Bill 902, i.e., regulation of Indian gaming, but do object to some of the methodology and provisions contained therein. Our specific objections are as follows:

The Bill states that a tribal gaming ordinance adopted by an Indian tribal government shall be approved by the Secretary of the Interior or the Commission as provided by the Act. We feel that requiring the Secretary's approval infringes upon Tribal sovereignty and is inconsistent with the recent Supreme Court ruling on the case of Kerr-McGee Corporation vs. Navajo Tribe of Indians. In this case, the Court ruled that no federal approval was necessary when an Indian tribe regulates or taxes oil and gas leases. The Constitution and By-Laws of the Sac and Fox Tribe of Indians of Oklahoma, for example, has no provision requiring Secretarial approval of ordinances.

We recommend that in defining the allowable uses of net revenues from Tribal gaming operations the specific language "for the purpose of funding essential governmental functions" be added to the Bill. (Section 6 (b) (2)).

We also object to the provision of the Bill (Section 6, Subsection (c)) that appears to place more stringent restrictions upon non-tribally operated gaming activities. We feel that this provision infringes upon tribes' right to self-government. As a government, we have chosen to regulate and tax the bingo operations within our jurisdiction. Through the Sac & Fox Bingo Ordinance of 1982 we regulate bingo operations even more stringently than the provisions of this Bill would require. For example, rather than requiring a financial statement, the Ordinance (Section 320) requires the furnishing of a $100,000.00 cash or surety bond. The Ordinance (Section 370) also requires the submission of information on all of the operation's staff, not just those with financial interest in or management responsibility for the operation. The Bill allows by management contract what we allow by Tribal statute; under our system, it is the licensee who assumes the financial risk. We have complete control of the licensed bingo operations within our jurisdiction. While we object to Secretarial approval of Tribal ordinances, we have no objection to requiring tribes to file such ordinances with the Secretary to insure adequate regulation. Please do not penalize us for our exercise of governmental authority. If this provision (Section 6, Subsection (c)) must be included, we request exemption from it. The system we have works; we invite your closest scrutiny.

Consistent with our earlier objection regarding the necessity of Secretarial approval of tribal gaming ordinances, we object to the Bill's provision (Section 7 (a)) requiring such approval of management contracts. The Solicitor's Opinion Memo of October 28, 1981, states that the trust responsibility almost always arises in connection with the Indian interests in real property. We would suggest, then, that the Secretary's involvement should start only when a lease is comtemplated for gaming purposes. At that time it would be appropriate for all available resources to be used to investigate the involved parties.

We also object to the proposed funding of an Indian Gaming Commission as provided by the Bill. Section 11, Subsection (e)): through assessment of each Indian tribe maintaining gaming activities. The Federal Communication Commission regulates the public airways and the Federal Trade Commission regulates trade. Both are federally funded; we feel an Indian Gaming Commission should be so funded. We see an inherent conflict in the funding of a Commission by those organizations or activities that it purports to regulate.

We do not support the regulation of Indian gaming by a Commission. We feel it would be more effective, both financially and operationally, to establish a National Indian Gaming Commission. We recommend that the composition of such a Commission be as follows:

One Tribal representative from each Bureau of Indian Affairs Area	(12)
One Presidential appointee	(01)
One appointee from each House of Congress - Senate and House of Representatives	(02)
One Justice Department appointee	(01)
One Bureau of Indian Affairs appointee, and	(01)
One Member-at-Large selected by the members of the Commission	(01)
For a total Commission membership of eighteen	(18)

We recommend that this Commission be given the following authority and responsibilities:

(1) Develop and implement national standards for Indian gaming
(2) Monitor compliance with those standards
(3) Investigate Indian gaming activities as necessary
(4) Conduct hearing on the local and national levels
(5) Report findings to Congress, the President and tribes
(6) Provide training and technical assistance in gaming activities to tribes.
(7) Authorize regional and/or state sub-commissions on gaming
(8) Authorize regional and/or state specific standards
(9) Hire staff as necessary for the fulfillment of these responsibilities

It is our estimation that initial funding for the establishment of such a Commission should be $1.5 million. We recommend a federal appropriation in that amount.

We also urge that the Bill include language specifying that the Court of competent jurisdiction in Indian gaming cases is Tribal Court. The inclusion of such language is consistent with another recent Supreme Court decision. In the case of Natinal Farmers Union Insurance Companies, et. al. vs. Crow Tribe of Indians, et. al., the Court's ruling upheld the Tribal Court's authority in the first instance to decide issues arising in Indian Country.

We also feel that the Bill should include language that would require the Justice Department to assist Tribes in the investigation of the backgrounds of existing or potential gaming operators. We suggest that such assistance be mandated, not withstanding the Privacy Act.

As noted previously, the Sac and Fox Tribe recognizes the need for regulation of Indian gaming. We hope that the legislation providing for such regulation will be consistent with Indian self-determination and tribal self-government. We believe that these recommendations we have made provide such

EXCERPTS FROM: SAC AND FOX TRIBE OF INDIANS OF OKLAHOMA - BINGO ORDINANCE OF 1982

Section 320: Bonds Required

(a) Prior to making application for a Bingo License pursuant to this Chapter every Applicant shall furnish a cash or surety bond with one or more good and sufficient corporate surities authorized to give bonds to the United States pursuant to Section 8 of Title 6 of the United States Code. Such bond shall be in the name of the Applicant as principal and the surety company as surety payable to the Sac and Fox Tribe of Indians of Oklahoma in a penal sum of not less than One Hundred Thousand Dollars ($100,000.00)

(b) At least;twenty days prior to the establishment of any prize amount in excess of the maximum amount allowed for the initial six week period pursuant to Section 335 of this Act, the Licensee shall file a new bond in an amount of not less than ten times the total amount of prizes the licensee shall establish as the maximum amount it will award in prizes on any day on which it conducts Bingo.

(c) All cash bonds tendered to the Court Clerk shall be deposited in the Court's Individual Indian Money account at the Shawnee Indian Agency. A copy of the receipt on surety bond, as the case may be, shall be delivered to the Treasurer by the Court Clerk.

(d) The bond shall specify that it is enforcable in the Tribal Court and the surety shall consent and submit himself irrevocably to the jurisdiction of the Tribal Court.

Section 339: License Required to Conduct Bingo

No person, except a licensee operating pursuant to this ordinance, shall conduct any game of bingo for which a charge is made or to the winner of which a prize is awarded.

Section 370: Reports on Licensee Staff

Prior to conducting any game or session of bingo, a licensee operating bingo pursuant to this act, shall file an affidavit with the Treasurer, on such form as the Treasurer shall by rule prescribe, listing the names, social security numbers, ages, post office and residence addresses of each and every person employed by said licensee, consession operator, or any and every other person on the premises who shall participate directly or indirectly in the operation of any game or any session of bingo. Names may be added or removed from the approved list at any time by filing a similar affidavit with the Treasurer. No licensee shall allow any person ever convicted of a felony to participate either directly or indirectly in the operation of any game or any session of bingo under this ordinance.

Section 371: Lists of Winners

Each licensee who conducts a game or session of bingo pursuant to this ordinance, shall file with the Treasurer, a list of each winner or winners of any game of bingo at each session of bingo. The list shall be itemized by game, and shall include the name of the winner, the address of the winner, the social security number of the winner, the amount or fair market value of the prize won, and the amount of the Bingo winnings tax deducted and withheld.

TULE RIVER TRIBAL COUNCIL
TULE RIVER INDIAN RESERVATION

June 21, 1985

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
838 Hart Office Building
Washington, D.C. 20510

S.902 (Indian Gaming Control Bill)

Dear Senator Andrews:

On behalf of the Tribal Council of the Tule River Indian Tribe of California, I request that the Committee consider our comments in its hearings on the Indian Gaming Control Bill currently before it.

Because of the importance of this issue to all tribes, we would have requested the opportunity to appear personally before the committee to offer testimony. However, our tribe is too poor to afford such a trip.

We do not have a bingo or other gaming activity on the reservation, with the exception of a small Elders game held periodically for tribal members.

However, even though we do not have an Indian gaming activity on our reservation, we wish to offer our impressions of the bill before you and of the Indian gaming issue in general.

The Indian policy of the United States is that the Indian people and their tribes should be actively encouraged to pursue self-determination, including the strengthening of tribal governments and development of economic self-sufficiency in order to

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reduce economic dependency upon the Federal government.

The key to self-determination is economic self-sufficiency. A poor tribe which must depend on the Federal government for most of its support cannot develop a strong government. Until the tribes develop economic self-sufficiency, they will remain virtual slaves to the Federal budget process and its highly competitive rationing process.

It is apparent that the Federal government, in its efforts to reduce its budget deficit, will reduce expenditures in many areas, including Indian programs. The tribes would like to assist in the reduction of the Federal budget, but only if they have available to them alternative means of support.

Legitimate Indian gaming activities are such an alternative means.

Indian gaming is not appropriate for all tribes. However, those tribes for whom gaming is appropriate should be permitted to pursue it as a valid means of pursuing self-determination.

Indian gaming will not solve all problems for all tribes however, it can be a first step toward solving some problems for some tribes.

There have been expressed many concerns that Indian gaming will lead to widespread crime and other public evils. While there have been incidents of the commission of crimes, it is our understanding that most Indian gaming operations are quiet, well run and free of crime.

The fact that a few improper or illegal incidents may have occurred should not lead to a ban on Indian gaming.

We feel that we must, in all due respect, remind the Congress that, regardless of fairly widespread examples of compaign improprieties, there has been no legislation to ban political campaigns.

In states in which bingo and other games of chance are not prohibited as a matter of public policy, Indian bingo has been well received. There have been no widespread public outcries, although officals of state and local governments and competing bingo games have complained that the Indian games should be banned. The general public has generally supported the games, as is evidenced by its patronization.

It has been alleged that organized crime has infiltrated the Indian gaming industry. We are not in a position to either confirm or deny that allegation, although we suspect that it is true to an unknown degree.

We strongly agree that unsuitable persons should not be permitted to participate in the industry.

We also feel strongly that the uncertainties surrounding Indian bingo have contributed to the infiltration by those persons. A Congressional recognition of the legitimacy of Indian gaming will, by itself, lead to the increase of legitimate investors.

We support Senate Bill 902, with the exception of certain provisions.

We have a small problem with the Section 6 provision that the Secretary or Commission must approve all gaming ordinances or resolutions. The problem has to do with a conflict between tribal self-determination and Federal control.

We do not disagree with Section 6 as it appears in the bill. However, we would resist any expansion of the minimum requirements included in subsection (b) (1) through (4).

Section 7 requires Secretarial of Commission approval of management contracts. That requirement strikes at the heart of Indian self-determination by removing from tribal powers the right to negotiate contracts on its own behalf.

The tribes should have available to them Secretarial or Commission reviews and assistance upon tribal request. However, each tribe should be permitted to reach an agreement acceptable to it.

The term "reasonable fee" may cause a problem in the event that final legislation includes a requirement of Secretarial or Commission approval. While approval of certain contract provision to ensure compliance with the bill may be desireable, approval should not be based on the "reasonableness" of the management fee. The determination of reasonableness is a business judgement that is best left to the tribal governing bodies.

We request that the Committee delete the requirement that complete financial statements be furnished to the Secretary or the Commission.

There will be undoubtedly be potential investors with integrity and with legitimate sources of estate accumulation who would be unwilling to assist in financing a gaming activity if full financial disclosure were required.

S.902 (Indian Gaming Control
Bill) (5)

We do not feel any useful purpose would be served by this requirement in that the detection of misrepresentations of financial information is difficult and costly and would probably be beyond the means of either the Secretary or the various Commissions. That difficulty can be best illustrated by the Nevada Gaming Commission, which has allowed certain undesireable persons to possess gaming licenses even with its rigorous licensing procedures.

Section 7(d) provides that a contract may be voided if any of the parties having a financial interest is found to have committed any of several certain offenses. We feel that it should be amended to allow for the voiding of the contract as to that party, but not as to the interest of innocent parties.

We further feel that the decision to void an interest should be made by the tribe upon discovery, which discovery would include notification by the Secretary or the Commission.

Section 8 authorizes the Secretary or Commission to become involved in the examination of business operations. We feel that the tribes, in cooperation with the independent auditors, can best perform that function.

In the event that financial disclosures are required, we suggest they be protected from public circulation by Section 9 of the bill, which currently extends only to annual audits and records copied by the Secretary or Commission.

Through Section 10, the DeConcini bill is substantially similar to the Udall bill (H.R. 1920), which is currently before the House Interior and Insular Affairs Committee. We sent Mr. Udall a letter in which we support the general substance of the bill.

However, we advised Mr. Udall that we also support the industry self-regulation approach of Sections 11 and 12 in the Senate bill.

Some features of the Commission plan may not, however, be practicable.

The procedure for establishing the Regional Commissions may not be a workable procedure. We suspect it would be extremely difficult in some area office jurisdictions to receive ratification by two-thirds of the tribes when only a minority of tribes are engaged in gaming activities.

A more practicable approach might be to create in each area office jurisdiction an Indian gaming industry association, composed of all tribes engaged in gaming. Tribal representatives would be required to meet the same requirements as set forth in the bill for Commission members.

The industry association should adopt a governing document for the Commission, the members of which would be selected by the association, with each tribe having one vote.

The nonvoting representatives specified in the bill should also be included.

Tribes which are not currently engaged in gaming, but which are contemplating such an activity, would be invited to become members of the association. Although they would not be entitled to vote in matters before the association, they would be entitled to all other rights of membership, including assistance in reviewing ordinances and contracts as well as other assistance that may be available. Upon the date the associate member tribe becomes a member of the industry, it will join the association as a full member, entitled to all rights.

Membership in the association should be required for all tribes with gaming enterprises.

We feel that, in addition to making the creation of the Commissions much simpler, the regulation of the industry by the industry would be much more productive.

Notwithstanding the objections raised by this letter, we strongly support Senate Bill 902 and prefer it to the Udall bill (H.R. 1920).

I sincerely appreciate the opportunity to have presented to the Committee the feelings of the tribe on this important matter. I give my best wishes to the Committee in its deliberations.

Very truly yours,

Laura Manuel

Laura J. Manuel
CHAIRPERSON

LM/mc

OFFICE OF THE TRIBAL CHAIRMAN

Fred B. Hoffman
Chairman

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June 21, 1985

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is being submitted for the record of your hearing next week, and is being provided to you and your full Committee, so that all will be aware of the views of the Cheyenne and Arapaho Tribes of Oklahoma on the proposed legislation to federally regulate tribal gaming operations. We oppose this effort. The Indian Tribes have the inherent sovereign authority to regulate gaming operations in Indian Country. The self-regulation is not only in keeping with federal Indian law, it is well within the spirit of the Indian self-determination policy, which the United States so often declares domestically and internationally as the operating policy and practice governing modern federal-tribal relations.

As you well know and have so often publicized as an advocate for us, the Indian Tribes and people are in dire economic straits. The profits from gaming operations provide a needed tribal revenue base for tribal performance of essential governmental functions and services.

Whenever Indian Tribes have an opportunity to develop an independent revenue base and to become participants in the free enterprise system, the federal bureaucracy moves to stifle these efforts and to gain control of the monies, while at the same time decreasing federal funding below the minimum amounts to assure Indian governmental and programmatic operations. This runs counter to Congressional and Administration policy statements of late regarding tribal self-sufficiency and the need to curtail federal paternalism. This is a matter of rights and of money. In both respects, Indian Tribes should continue to exercise and pursue these tangible and intangible matters, free of federal interference.

Sincerely,
Fred B. Hoffman
Fred B. Hoffman
Chairman

cc: Honorable Members of the Committee
The President
The Attorney General
The Secretary of the Interior

PAN AMERICAN MANAGEMENT COMPANY
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July 18, 1985

Senator Mark Anderson, Chairman
Senate Select Committee on Indian Affairs
Hart Senate Office Building
Room 838
Washington, D.C. 20510

RE: Testimony of Leonard Prescott, Chairman of the Shakopee Mdewakanton Sioux Community on S.902 at hearing held on June 26, 1985

Dear Senator Anderson:

A review of the unedited testimony of Leonard Prescott appearing at pp.244-251 has indicated several factual distortions and discrepancies to which we, as the management company referred to, feel the need to respond.

On page 245, lines 5 through 15, Mr. Prescott states that since certain members of the Shakopee Mdewakanton Sioux Community took over and began managing the Bingo lounge the monthly net profits have steadily increased to $70,000 in April, $110,000 in May and $160,000 in the month of June, 1985. These statements are a gross misrepresentation of the facts and, as such, are indicative of the type of disinformation which has been presented by Mr. Prescott and his attorneys to your committee. In fact, financial statements submitted by the Community's accountant on July 12, 1985, show the monthly net profits to be as follows:

April, 1985 - $69,001*
May, 1985 - $46,952
June, 1985 - $54,407

On June 17, 1985, pursuant to the requirements of our contract with the Community, we presented to Mr. Prescott a conservative profit plan for the present calendar year which reflect profits in the range shown by the financial statements of the Community.

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*It should be noted that April profits were actually lower than reported because during the first full month of operation under Community control, payables were being built up. As the accounting is done on a cash basis, an increase in payables resulted in a misleading net profit figure.

On page 245, lines 18 and 19, Mr. Prescott states the Community received no money from the lounge while we were the managers. In point of fact, we only managed the lounge for five months and during that time the management company is the one that received no money or derived any benefit from the operation of the lounge because all profits were used to pay community debt incurred during construction of the Cultural Center and the lounge itself.

On page 247, lines 7 through 9, Mr. Prescott implies that the management company made questionable payments to certain members of the Community. A recent arbitration proceeding involving this matter has been decided with a finding of no improprieties in or with any such payments, and that the previous Chairman was entitled to receive the $80,000 he received as reasonable compensation for providing the land (and giving up the business he conducted on that land) to make possible the bingo project.

It is important for the committee to note that Mr. Prescott not only fails to mention that recent audits and arbitration and legal proceedings have not shown any impropriety on the part of the management company, but he does not even acknowledge that without the financial backing and know-how of the management company his Community would have been unable to implement such a project and the Community would have been deprived of the many benefits it has derived from what is probably the most profitable enterprise ever undertaken by an Indian Community in Minnesota. It should also be pointed out that there has been a recent change in leadership within the Community through the removal of its Chairman. The Community is currently in turmoil and the management company has unwillingly and through no fault of its own found itself caught in the middle of that turmoil.

We are in favor of federal legislation regulating bingo on federal trust property as we believe that only through proper regulation can Indian bingo survive over a long period of time and thereby provide a stable, long lasting source of income to Indian communities and management companies engaged in that business. We would welcome the opportunity to appear before you to present our views on the proposed legislation. In the interim, we felt it incumbent upon us to correct these factual misrepresentations.

Sincerely,

LITTLE SIX ENTERPRISES

By

Alfred Estrada, Manager

STOCKBRIDGE - MUNSEE BAND OF MOHICAN INDIANS

STOCKBRIDGE - MUNSEE COMMUNITY
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July 1, 1985

IA

Mr. Mark Andrews, Chairman
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Mr. Andrews:

This is in response to your letter of May 24, 1985 requesting the Tribe's comments on Senate Bill 902 called the Indian Gaming Control Act.

The Stockbridge-Munsee Community is a federally recognized tribe located in northern Wisconsin. We currently conduct a small gaming operation on the reservation and to date, have never had any difficulty with non-Indians managers etc., affiliated with organized crime. The Tribe's current operation is 100% tribally owned, operated and maintained. All profits derived from the business are used to support the health, welfare, social and economic well-being of the Tribal members. All games are conducted in accordance with a Tribal ordinance regulating the operation of Bingo games on the reservations and this ordinance has recently been amended and is now pending final approval from the Bureau of Indian Affairs. With this experience as a backdrop, the following comments on the proposed legislation are offered for your consideration:

1. Section 5 of the bill requires Secretarial or the Commissions' approval of Tribal Ordinances relating to the licensing of Bingo on reservations. Not all Tribes are required under their constitutions to obtain such approval. This provision as applied to those Tribes infringes on a Tribe's authority over its members and territory.

2. The proposed legislation essentially undermines a Tribe's right to govern gaming conducted by individual Tribal members. Forcing tribes to use and adopt policies at least as restrictive as the state's, effectively eliminates Tribal policies regarding member conduct. As such, the provision represents another example of Congressional erosion of Indian sovereignty.

3. Section 9 does not make clear whether the Freedom of Information Act applies or not. If material obtained pursuant to Section 6 (B)(3) and Section 8 is exempt under that act, the legislation should clearly so state.

4. Section 11, referring to the Indian Gaming Commissions is vague

as to whether each Tribe in the area receives one vote, or whether each member of the governing body of the Tribe has one vote. Because of this ambiquity, the absence of any appeal provisions and the assessments against Tribes operating Bingo games, the Stockbridge-Munsee Community opposes this section altogether.

Although the Tribe supports federal legislation to protect Indian gaming on reservations, any provisions which effectively curtail Tribal authority over members on the reservation are unacceptable. Thus, the Tribe urges the removal of the provisions relating to Secretairal approval of Tribal ordinances, the Regional Indian Gaming Commissions, and state standards for licensing individual members from the legislation.

Thank you for the opportunity to submit these comments.

Sincerely,

Leon Miller

Leon Miller
Tribal Chairman

LM/ek